

## **The complaint**

Mrs P complains that Revolut Ltd ('Revolut') won't refund the money she says was lost after falling victim to a scam.

## **What happened**

In July 2022, Mrs P saw an advertisement on a social media site which was promoted by a well-known personality and talked about an investment opportunity. Mrs P clicked on the link and left her contact information.

Mrs P was called by someone who said they worked for the company, I'll refer to the company as F. Mrs P was told that F had been running for a number of years and focused on helping inexperienced investors to earn income and giving them the tools to learn to invest themselves. Mrs P was told she could start with an investment of only £250, F would take 10% of her profits as commission and that she could withdraw her money at any time.

As part of her investment, Mrs P was told to download screen sharing software, open an account with a cryptocurrency exchange (who I'll refer to as B) and open an account with F on their platform.

Mrs P says F's website was professional and included a "contact us" section and a help desk. She says the caller from F was knowledgeable and explained how the investment would work.

Mrs P made her initial £250 payment from an account not held with Revolut. After making the payment, the funds showed up in Mrs P's account with F.

Mrs P says the caller from F was very personable and talked to her on a regular basis.

Approximately one week after making her initial payment, the caller started applying pressure to get Mrs P to invest further funds. Mrs P didn't have any other money she could invest, and she was persuaded by the scammer to take out a loan with her main bank (who I'll refer to as bank H).

The loan purpose was given as home improvements, and once it was approved, it was paid into Mrs P's account with bank H. Mrs P then tried to transfer £25,000 to her Revolut account. Bank H intervened and asked Mrs P some questions about the purpose of the payment. Mrs P told bank H the money was for home improvements and that she wanted to move it to her Revolut account to get cashback on her expenditure. Bank H were satisfied with what Mrs P told them and processed the transfer.

On 29 July 2022, Mrs P made a card payment of £25,000 to cryptocurrency exchange B from her Revolut account.

Once Mrs P's investment balance on F's platform had significantly increased, and just before her first loan repayment was due, Mrs P tried to withdraw her money. Mrs P was told she had to pay taxes, so she transferred money from her account with bank H to Revolut

account. She then made two card payments from her Revolut account on 4 August 2022, for £6,999 and £6,001 respectively, to cryptocurrency exchange B. When Mrs P was asked to pay further fees and wasn't able to withdraw any money from F's platform, she realised it was a scam.

Mrs P reported the scam to Revolut in January 2023. Revolut considered her fraud claim but declined to refund her, saying they had a duty to follow her payment instructions promptly. Revolut also explained that Mrs P was outside the time limit in which to raise a chargeback, of 120 days.

Mrs P wasn't happy with Revolut's response, so she brought a complaint to our service.

Ultimately, an investigator upheld Mrs P's case and recommended that Revolut refund 50% of Mrs P's loss. The investigator felt that Revolut should've intervened when Mrs P made the first payment, and if they had, it was most likely the scam would've been uncovered and Mrs P's loss prevented. However, the investigator felt Mrs P should've been concerned with what she was told by F and done checks before making the payments. So, they felt it was fair for liability be split between Mrs P and Revolut. The investigator recommended that Revolut pay simple interest of 8% per year, on £12,500 of the refund. But the investigator didn't feel interest should be paid on the remaining £5,500 of the refund, as this money was borrowed from a family member and hadn't been repaid yet.

Mrs P accepted the investigator's opinion, but Revolut disagreed.

Revolut raised the following points:

- Revolut is bound by contract, applicable regulations, and the common law to execute valid payment instructions. This duty is strict and is subject only to very limited exceptions (for example if the customer has asked Revolut to act unlawfully).
- Under the PSR's 2017 Revolut has a duty to promptly process payment instructions.
- Revolut suggest that we've departed from the relevant law, but we haven't acknowledged that or explained why.
- Revolut does not owe a duty to prevent frauds and scams.
- We're overstating Revolut's duty by saying they should've taken additional steps, or made additional checks, before processing a payment.
- Revolut recognises its obligations to put in place adequate procedures to counter the risk that it may be used to further financial crime (and has such systems and controls in place), but that duty is not absolute and does not go as far as to require Revolut to detect and prevent all fraud, particularly in the face of authorised customer instructions.
- Revolut referred to the precedence set in *Philipp v Barclays Bank UK plc* [2023] UKSC25.
- We're applying the Contingent Reimbursement Model Code (CRM Code) or mandatory reimbursement rules proposed by the PSR, to this case.
- Mrs P's loss didn't occur on her Revolut account, but with the cryptocurrency wallet, so Revolut aren't liable.
- We have reached an answer on what is considered unusual payments, based on bank account activity – not taking into account the nature of EMI accounts which operate differently.
- Liability for bank H should be considered.
- Mrs P acted negligently in disregarding any warnings provided by bank H.
- Mrs P lied to bank H, therefore it's more likely than not she would have lied to

Revolut.

As the case couldn't be resolved informally, it was passed to me to review.

Having reviewed the case, I intended reaching the same outcome as the investigator but wanted to provide further reasoning and context. So, I issued a provisional decision and gave both parties a chance to provide any further evidence before I issued a final decision.

### **My provisional decision**

In my provisional decision I said:

In broad terms, the starting position at law is that an Electronic Money Institution ("EMI") such as Revolut is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, subject to some limited exceptions banks have a contractual duty to make payments in compliance with the customer's instructions.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks to their customers when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, it must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- At paragraph 114 of the judgment the court noted that express terms of the current account contract may modify or alter that position. In *Philipp*, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; but the court said having the right to decline to carry out an instruction was not the same as being under a legal duty to do so.

In this case, the terms of Revolut's contract with Mrs P modified the starting position described in *Philipp*, by – among other things – expressly requiring Revolut to refuse or delay a payment *"if legal or regulatory requirements prevent us from making the payment or mean that we need to carry out further checks"* (section 20).

So Revolut was required by the terms of its contract to refuse payments in certain circumstances, including to comply with regulatory requirements such as the Financial Conduct Authority's Principle for Businesses 6, which required financial services firms to pay due regard to the interests of their customers and treat them fairly. I am satisfied that paying due regard to the interests of its customers and treating them fairly meant Revolut should have been on the look-out for the possibility of fraud and refused card payments in some circumstances to carry out further checks.

I must also take into account that the basis on which I am required to decide complaints is broader than the simple application of contractual terms and the regulatory requirements referenced in those contractual terms. I must determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case (DISP 3.6.1R) taking into account the considerations set out at DISP 3.6.4R.

Whilst the relevant regulations and law (including the law of contract) are both things I must take into account in deciding this complaint, I'm also obliged to take into account regulator's guidance and standards, relevant codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time: see DISP 3.6.4R. So, in addition to taking into account the legal position created by Revolut's standard contractual terms, I also must have regard to these other matters in reaching my decision.

Looking at what is fair and reasonable on the basis set out at DISP 3.6.4R, I consider that Revolut should in July 2022 have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.

In reaching the view that Revolut should have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances, I am mindful that in practice all banks and EMI's like Revolut did in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;<sup>1</sup>
- requiring consumers to provide additional information about the purpose of transactions during the payment authorisation process;
- using the confirmation of payee system for authorised push payments;
- providing increasingly tailored and specific automated warnings, or in some circumstances human intervention, when an increased risk of fraud is identified.

I am also mindful that:

- Electronic Money Institutions like Revolut are required to conduct their business with "due skill, care and diligence" (FCA Principle for Businesses 2), "integrity" (FCA Principle for Businesses 1) and a firm "must take reasonable care to organise and control its affairs responsibly and effectively, with adequate risk management systems" (FCA Principle for Businesses 3)<sup>2</sup>.
- Over the years, the FCA, and its predecessor the FSA, have published a series of publications setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by firms to counter financial crime, including various iterations of the *"Financial crime: a guide for firms"*.
- Regulated firms are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. Those requirements include maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due-diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship). I do not suggest that Revolut ought to

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<sup>1</sup> For example, Revolut's website explains it launched an automated anti-fraud system in August 2018:

[https://www.revolut.com/news/revolut\\_unveils\\_new\\_fleet\\_of\\_machine\\_learning\\_technology\\_that\\_has\\_seen\\_a\\_fourfold\\_reduction\\_in\\_card\\_fraud\\_and\\_had\\_offers\\_from\\_banks/](https://www.revolut.com/news/revolut_unveils_new_fleet_of_machine_learning_technology_that_has_seen_a_fourfold_reduction_in_card_fraud_and_had_offers_from_banks/)

<sup>2</sup> Since 31 July 2023 under the FCA's new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

have had concerns about money laundering or financing terrorism here, but I nevertheless consider these requirements to be relevant to the consideration of Revolut's obligation to monitor its customer's accounts and scrutinise transactions.

- The October 2017, BSI Code<sup>3</sup>, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code (and Revolut was not a signatory), but the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now (regardless of the fact the BSI was withdrawn in 2022).
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name. And, increasingly, we have seen the use of an EMI (like Revolut) as an intermediate step between a high street bank account and cryptocurrency wallet.
- The main card networks, Visa and Mastercard, don't allow for a delay between receipt of a payment instruction and its acceptance: the card issuer has to choose straight away whether to accept or refuse the payment. They also place certain restrictions on their card issuers' right to decline payment instructions. The essential effect of these restrictions is to prevent indiscriminate refusal of whole classes of transaction, such as by location. The network rules did not, however, prevent card issuers from declining particular payment instructions from a customer, based on a perceived risk of fraud that arose from that customer's pattern of usage. So it was open to Revolut to decline card payments where it suspected fraud, as indeed Revolut does in practice (see above).

Overall, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable in July 2022 that Revolut should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – (as in practice Revolut sometimes does); and

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<sup>3</sup> BSI: PAS 17271: 2017" Protecting customers from financial harm as result of fraud or financial abuse"

- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.

*Should Revolut have recognised that Mrs P was at risk of financial harm from fraud?*

While I appreciate that Mrs P had recently opened the account, so there was no previous account activity for Revolut to compare the scam payments to, I still think Revolut should've identified a potential scam risk and intervened when Mrs P made her first payment.

I say this because the first payment was for £25,000 and it was identifiably going to cryptocurrency – as the payee was a well-known cryptocurrency exchange. So there was potential for significant financial harm.

*What did Revolut do to warn Mrs P?*

Revolut have told us they didn't intervene on any of the payments that Mrs P made, and that Mrs P wasn't provided with any warnings.

Revolut have pointed to their terms and conditions – clause 15 which says “Always make sure you know the person you are making a payment to. If someone approaches you and asks you to make a payment to them, but you are not sure who they are or what the payment is for, you may be a victim of a scam”. They've also referred to information on their website help centre, which includes posts on how not to fall victim to scams.

However, neither of these forms of warning were presented to Mrs P as part of the payment journey for her to consider prior to making the payment. They required Mrs P to self-identify that she might be the victim of a scam and search Revolut's website for support, which isn't a reasonable expectation.

*What kind of warning should Revolut have provided?*

Based on the information available to Revolut when Mrs P made the payment, I think they should've provided intervened and referred Mrs P to their in-app chat so that they could ask her about the payment she making, then provided a tailored warning based on what she told them.

*If Revolut had provided a warning of the type described, would that have prevented Mrs P's loss?*

Revolut say that even if they had intervened, the scam wouldn't have been uncovered based on Mrs P giving incorrect information to bank H when they intervened.

However, Mrs P told bank H that the loan was for home renovations and that she was transferring the funds to her Revolut account to take advantage of cashback on purchases. This story wouldn't have worked if Revolut had asked questions, as it wouldn't make sense to be sending money to a cryptocurrency exchange for home improvements. The information available to Revolut, that the money was being sent to a cryptocurrency exchange, wasn't available to bank H and would've changed the questions that Mrs P would've been asked and the type of answers she could give.

Mrs P wasn't an experienced investor, didn't understand what cryptocurrency investment entailed and wouldn't have been able to explain what she was investing in, if basic questions

were asked. I think it's more likely than not Mrs P would've answered the questions honestly as I can't see that she was given a cover story that would've explained why she was paying £25,000 to a cryptocurrency.

Also, I think the answers Mrs P is likely to have given would've concerned Revolut that she was likely the victim of a cryptocurrency investment scam. And, had Revolut provided a warning relevant to that scam type, that the scam would've been uncovered and Mrs P's loss would've been prevented.

Revolut suggest Mrs P was given a warning by bank H, which she ignored. But the questions that bank H asked were related to a potential safe account scam – based on the information they had available about the payments Mrs P was making. Bank H asked if someone else had asked her to move her money to a safe account or lie to the bank about the reason for the loan. They also confirmed with Mrs P that no one else had access to the account she was sending the money to – her Revolut account.

While Mrs P was asked a number of questions to try and identify if she might be the victim of a scam, I can't see that she was given a warning or that any of the questions were related to the circumstances of a cryptocurrency investment scam. This is because the information available to bank H at the time Mrs P made her payments, was different to the information available to Revolut. So Revolut's intervention would've been the first time that Mrs P was made asked questions relating to a payment for cryptocurrency.

I think Revolut asking relevant questions about the payment would've uncovered the scam and that Mrs P wouldn't have continued with making the payments and her loss could've been prevented. Especially taking into account that she had borrowed money in order to make these payments.

*Is it fair and reasonable for Revolut to be held responsible for Mrs P loss?*

In reaching my decision about what is fair and reasonable, I have taken into account that Revolut was the middleman with regards to the payment journey. Mrs P had moved the money from her account with bank H to Revolut, before sending it onto a cryptocurrency wallet and then on to the scammer.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mrs P might have been at risk of financial harm from fraud when she made her first payment, and in those circumstances, it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the loss Mrs P suffered.

The fact that the money used to fund the scam came from elsewhere and wasn't lost at the point it was transferred to Mrs P's own account does not alter that fact and I think Revolut can fairly be held responsible for Mrs P's loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against either the firm that is the origin of the funds or the point of loss.

I've also considered that Mrs P has only complained against Revolut. I accept that it's *possible* that other firms might also have missed the opportunity to intervene or failed to act fairly and reasonably in some other way, and Mrs P could instead, or in addition, have sought to complain against those firms. But Mrs P has not chosen to do that and ultimately, I cannot compel them to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mrs P's compensation in circumstances where: the consumer has only complained about one respondent from which they are

entitled to recover their losses in full; has not complained against the other firm (and so is unlikely to recover any amounts apportioned to that firm); and where it is appropriate to hold a business such as Revolut responsible (that could have prevented the loss and is responsible for failing to do so). That isn't, to my mind, wrong in law or irrational but reflects the facts of the case and my view of the fair and reasonable position.

Ultimately, I must consider the complaint that has been referred to me (not those which haven't been or couldn't be referred to me) and for the reasons I have set out above, I am satisfied that it would be fair to hold Revolut responsible for Mrs P's loss from the first payment (subject to a deduction for Mrs P's own contribution which I will consider below).

#### *Should Mrs P bear any responsibility for their losses?*

Having carefully considered the circumstances under which Mrs P made the payments, I'm satisfied that it would be fair for Mrs P to share responsibility for her loss with Revolut.

I say this because the chat suggests Mrs P had some concerns about what she was being asked to do by the scammer. Also, I think a reasonable person would've done independent checks before investing with F. Mrs P appears to have relied on the advertisement she saw, F's website and what the scammer told her. I can't see that she did any checks to ensure that F was a genuine company, or that what she was being told about returns was realistic. I also think Mrs P should've been concerned when the scammers told her to apply for a loan in order to invest. Mrs P couldn't afford the repayments on the loan and had been told she would receive returns from the investment before the loan payment was due, which was unrealistic and should've concerned her.

Overall, I think there were enough red flags that Mrs P should've been concerned about the legitimacy of the investment and what she was told, and therefore should share liability for her loss with Revolut.

In summary, I think Revolut should've intervened when Mrs P made her first payment and if they had her loss could've been prevented. However, I think it's fair for Mrs P to share the responsibility for her loss with Revolut and therefore only ask Revolut to refund 50%.

#### *The interest award*

In this case, Mrs P borrowed £25,000 from bank H to fund the first payment, the remaining £13,000 was borrowed from a family member.

In relation to the funds borrowed from a family member, I'm satisfied that Mrs P is responsible for repaying it and the loss is hers. But, as Mrs P hasn't been deprived of the use of those funds and there is no indication she has been charged interest on those funds - so I don't think it's fair to award interest on that portion of the refund.

So I only intend to ask Revolut to pay 8% simple interest per year on £12,500 of the refund (being half of the loan value), with the interest calculated from the date of the first payment until the date of settlement.

My provisional decision was that I intended to uphold this complaint and ask Revolut to refund 50% of the payments Mrs P made and pay simple interest of 8% per year on £12,500 of the refund, calculated from the date of the first payment until the date of settlement.

#### **Responses to my provisional decision**

Mrs P responded saying she accepted my provisional decision.



Revolut haven't responded to my provisional decision, despite the investigator checking they had received it.

Under the Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.13, says, if a respondent (in this case Revolut) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint.

As the deadline for responses to my provisional decision has expired (over a week ago), I'm going to proceed with issuing my final decision.

### **What I've decided – and why**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As neither party have provided any new evidence for me to consider, I see no reason to reach a different answer than I did in my provisional decision.

#### *In summary*

Even though this was a new account, I think Revolut should've identified a potential fraud risk when Mrs P made the first payment of £25,000, which was paid to a well-known cryptocurrency exchange. I think it was reasonable to expect human intervention, which may've involved referring Mrs P to their in-app chat to talk to a specialist. I would've expected Revolut to have asked Mrs P open questions about the purpose of the payment and think it's more likely than not Mrs P would've answered these questions honestly, and that as a result, the scam would've been uncovered and Mrs P's loss prevented.

However, I think Mrs P should've been concerned at what the scammers were asking her to do, including taking out a loan she couldn't afford. On that basis, I think it's fair for Mrs P to share responsibility for her loss with Revolut. So Revolut should refund 50% of the payments Mrs P made which equates to £19,000.

Mrs P borrowed £13,000 from a family member to fund her payments, with the balance of £25,000 borrowed from bank H. I haven't seen anything to suggest that Mrs P has been or will be required to pay interest to the family member. So, I think it's fair for Revolut to only pay interest on £12,500 of the refund (being 50% of the funds Mrs P borrowed from bank H) at 8% simple per year, calculated from the date of the payment until the date of settlement. No interest is payable on the balance of the refund.

### **Putting things right**

To put things right, I require Revolut Ltd to:

- Refund 50% of the payments Mrs P made – which equates to £19,000
- Pay simple interest of 8% per year on £12,500 of the refund, calculated from the date of the first payment until the date of settlement.\*

\*If Revolut Ltd considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mrs P how much it's taken off. It should also give Mrs P a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

**My final decision**

My final decision is that I uphold this complaint against Revolut Ltd and require them to compensate Mrs P, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 10 December 2024.

Lisa Lowe  
**Ombudsman**