

## The complaint

Miss S complains that Revolut Ltd won't return funds she lost to a scam.

## What happened

The details of this complaint are well known to both parties, so I won't repeat it all again here.

Miss S said the following payments were made to what she thought was a cryptocurrency investment.

Payment	Date	Type of Transaction	Amount
1	17 July 2023	Debit card payment	£1,404.50
2	18 July 2023	Debit card payment	£2,999.80
3	20 July 2023	Debit card payment	£4,389.72
4	20 July 2023	Debit card payment	£665.81

In summary, Miss S said she saw an advertisement on social media about a cryptocurrency investment opportunity and enquired about it. The scammer contacted Miss S and she later decided to invest. Miss S said she realised she had been scammed when she couldn't withdraw her funds from the investment. She raised the matter with Revolut, but it didn't recover her funds and didn't uphold her complaint.

Our investigator thought the complaint should be upheld. He thought Revolut ought to have intervened when Miss S made the third payment and had it done, it could have prevented her losses.

Revolut didn't accept our investigator's opinion and asked for an ombudsman's decision because it says it is irrational to hold it responsible for a consumer's losses where it was just an intermediary link in the process. As such, the complaint has been passed to me for a 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.

I would like to reassure both parties that I have carefully considered the detailed submissions we've received, but I haven't commented on it all here. Instead I've focused on setting out what is key to the decision I've reached.

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 Miss S 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.

In practice Revolut did in some instances refuse or delay payments at the time where it suspected its customer might be at risk of falling victim to a scam.

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 2023 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.

For example, it is my understanding that in July 2023, Revolut, whereby if it identified a scam risk associated with a card payment through its automated systems, could (and sometimes did) initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat).

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 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

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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.

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

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 2023 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
- 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.

Whilst I am required to take into account the matters set out at DISP 3.6.4R when deciding what is fair and reasonable, I am satisfied that to comply with the regulatory requirements that were in place in July 2023, Revolut should in any event have taken these steps.

*Should Revolut have recognised that Miss S was at risk of financial harm from fraud?*

By July 2023, firms like Revolut had been aware of the risk of multi-stage scams involving cryptocurrency (that is scams involving funds passing through more than one account controlled by the customer before being passed to a fraudster) for some time. Scams involving cryptocurrency have increased over time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency have continued to increase since. They reached record levels in 2022. During that time, cryptocurrency was typically allowed to be purchased through many high street banks with few restrictions.

By the end of 2022, however, many of the high street banks had taken steps to either limit their customer's ability to purchase cryptocurrency using their bank accounts or increase friction in relation to cryptocurrency related payments, owing to the elevated risk associated with such transactions. And by July 2023, when these payments took place, further restrictions were in place. I recognise that, as a result of the actions of other payment service providers, many customers who wish to purchase cryptocurrency for legitimate purposes will be more likely to use the services of an EMI, such as Revolut. And I'm also mindful that the vast majority of cryptocurrency purchases made using a Revolut account will be legitimate and not related to any kind of fraud (as Revolut has told our service). However, our service has also seen numerous examples of consumers being directed by fraudsters to use Revolut accounts in order to facilitate the movement of the victim's money from their high street bank account to a cryptocurrency provider.

So, taking into account all of the above, I am satisfied that, by the end of 2022, prior to the payments Miss S made in July 2023, Revolut ought fairly and reasonably to have recognised that its customers could be at an increased risk of fraud when using its services to purchase cryptocurrency, notwithstanding that the payment would often be made to a cryptocurrency wallet in the consumer's own name. In those circumstances, as a matter of what I consider to have been fair and reasonable and good practice, Revolut should have had appropriate systems for making checks and delivering warnings before it processed such payments.

Taking the above into account, and in light of the increase in multi-stage fraud, particularly involving cryptocurrency, I don't think that the fact the payments in this case were going to an account held in Miss S's own name should have led Revolut to believe there wasn't a risk of fraud.

Having reviewed Miss S's account activity and the payments made to the scam. I don't think payments 1 and 2 were of a significantly high value, nor were they made in quick succession (which might indicate a scam) as they were made a day apart. Therefore, I don't find these payments should have caused Revolut concern that Miss S was at risk of financial harm from fraud.

However, I think Revolut, recognising that the payments were all to a cryptocurrency provider and considering Miss S's account activity in the months prior, should have found payment 3 to have been unusual and uncharacteristic for her. The payments were also increasing in value which is a known fraud pattern. Taking all these factors into consideration I think Revolut ought to have been concerned that Miss S was at a heightened risk of harm from fraud and intervened before processing this payment. However, I can't see that Revolut did so, or that it provided Miss S any warnings in relation to these payments.

#### What kind of warning should Revolut have provided?

I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've given due consideration to Revolut's duty to make payments promptly, as well as what I consider to have been good industry practice

at the time this payment was made.

Taking that into account, I think Revolut ought, when Miss S attempted to make payment 3, knowing (or strongly suspecting) that the payment was going to a cryptocurrency provider, to have provided a warning (whether automated or in some other form) that was specifically about the risk of cryptocurrency scams, given how prevalent they had become by the end of 2022. In doing so, I recognise that it would be difficult for such a warning to cover off every permutation and variation of cryptocurrency scam, without significantly losing impact.

So, at this point in time, I think that such a warning should have addressed the key risks and features of the most common cryptocurrency scams – cryptocurrency investment scams. The warning Revolut ought fairly and reasonably to have provided should have highlighted, in clear and understandable terms, the key features of common cryptocurrency investment scams, for example referring to: an advertisement on social media, promoted by a celebrity or public figure; an ‘account manager’, ‘broker’ or ‘trader’ acting on their behalf; the use of remote access software and a small initial deposit which quickly increases in value.

I recognise that a warning of that kind could not have covered off all scenarios. But I think it would have been a proportionate way for Revolut to minimise the risk of financial harm to Miss S by covering the key features of scams affecting many customers but not imposing a level of friction disproportionate to the risk the payment presented.

*If Revolut had provided a warning of the type described, would that have prevented the losses Miss S suffered from payment 3?*

I’ve considered whether a warning setting out the key features of a cryptocurrency investment scam would have had a positive impact on Miss S and ultimately prevented her losses and on the balance of probabilities I think it would have. Many of the key features of a cryptocurrency investment scam were present here such as an advertisement on social media, being assisted by a broker/financial advisor and downloading screen sharing software so that the scammer could assist Miss S to set up an account on a cryptocurrency exchange website.

While Miss S has provided evidence of some written correspondence with the scammer, she told us most of their conversations took place over the phone. From the information provided I can’t see that Miss S was asked to lie to Revolut nor was she provided a cover story to use if any of the payments were to have been stopped. And I have not seen any other evidence that at the time she made payment 3, Miss S was so under the scammers spell to the extent that she would not have taken heed to a warning if one was provided.

So, on the balance of probabilities, had Revolut presented Miss S a detailed warning tailored to cryptocurrency investment scams, I think it’s likely she would have been able to note the similarities it bore to her circumstances and would have been positively impacted by such warning. Miss S could then have carried out further research into the investment firm and educated herself on the risk of scams when investing in cryptocurrency. Had she done, I think it’s likely Miss S would have been concerned enough, not to proceed to make the payment. This is because, as Miss S found when she became suspicious of the scammer, there were already negative reviews relating to the investment company and warnings that it could be a scam.

*Is it fair and reasonable for Revolut to be held responsible for Miss S’s loss?*

In reaching my decision about what is fair and reasonable, I have taken into account that Miss S would likely have made the payments to an account in her own name rather than directly to the fraudsters.

But as I've set out in some detail above, I think that Revolut still should have recognised that Miss S might have been at risk of financial harm from fraud when she made payment 3, 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 losses Miss S suffered. The fact that the money used to fund the scam came from elsewhere and/or wasn't lost at the point it was transferred to Miss S's own account does not alter that fact and I think Revolut can fairly be held responsible for Miss S'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 Miss S 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 Miss S could instead, or in addition, have sought to complain against those firms. But Miss S has not chosen to do that and ultimately, I cannot compel her to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Miss S'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 Miss S's loss from Payment 3 (subject to a deduction for Miss S's own contribution which I will consider below).

#### *Should Miss S bear any responsibility for their losses?*

I have considered whether Miss S was negligent and should bear some responsibility for her losses and I don't think it would be fair here.

I think there were aspects of the scam that would have appeared genuine to Miss S. I can understand why Miss S might have thought she could rely on an advertisement posted on a well-known social media platform particularly as she tells us she could also see what appeared to be positive reviews from its customers. I'm also aware that it was Miss S's first time making this type of investment, so I can understand why she might have relied on the advice she thought was from an expert in the field.

Miss S was provided with a link to view the investment firm's registration on the Companies House website, and I can see that a genuine firm does exist. Miss S was also taken through a verification process and I think this would have served to further convince her the firm was legitimate and the investment opportunity was genuine.

Miss S was given access to the investment platform where she could see her deposits and the trades that were made. We have been provided with screenshots of the platform, and it shows deposits and a trading history which are in line with the payments Miss S made to the scam.

Miss S could see her initial investment growing via the investment platform. Although I accept this was false information created by the scammer, considering the information Miss S could see I can understand why she might have believed it to be genuine. I'm also aware the scammers use the supposed success of the initial payments as a way to encourage their

victims to make larger deposits in the hope that they would receive greater returns.

While I think Miss S ought to have carried out research of her own before investing her funds, I can understand why in the circumstances she might have thought she could trust the scammer and the information they provided.

Taking all this into account, I don't think Miss S was negligent to the point whereby it would be fair or reasonable to reduce her refund in these specific circumstances.

### **My final decision**

For the reasons outlined above, my decision is that I uphold this complaint and require Revolut Ltd to:

- refund payments 3 and 4 to Miss S, that's £5,055.53.
- It should also apply 8% simple interest, per year, for loss of use of her money during this time - calculated from the date of each payment to 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 Miss S how much it's taken off. It should also give Miss S a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 28 April 2025.

Oluwatobi Balogun  
**Ombudsman**