

The complaint

Ms H complains that Revolut Ltd did not refund a series of payments she lost to a scam.

What happened

Ms H found an investment opportunity through social media. An individual with a significant following said they could help her invest her money so she signed up to an investment platform I'll call 'C' for the purposes of this decision. She was told that C used AI algorithms and bots to make trades on her behalf, and she would need to open a cryptocurrency account to fund the investment. She did so, and made the following payments from her Revolut account to a cryptocurrency wallet in her name:

Date	Amount
17/11/2021	£1,563.01
29/12/2021	£500
30/12/2021	£3,000
01/01/2022	£5,000
01/01/2022	£1,000
04/01/2022	£6,415
10/01/2022	£800
21/01/2022	£2,500
31/01/2022	£1,000
07/02/2022	£2,000
12/02/2022	£1,500

Following the initial deposit, Ms H could see that it had credited her trading account, so she felt comfortable depositing more. She continued to add to her investment over the next three months and saw the returns grow. However, in late February 2022, she logged onto her trading account only to find the balance had reduced to zero, so she contacted the individual on social media. They said Ms H had caused the issue, despite the fact she had not placed trades herself. When she looked on social media, she could see several other individuals who had gone through the same experience as her and lost their money.

Ms H raised a scam claim with Revolut in September 2023 who issued a final response letter. In this, they felt that they had acted reasonably as there were no grounds to believe the transactions were suspicious compared to Ms H's genuine account activity. The complaint was referred to our service.

Our Investigator looked into it and felt the payment of £5,000 on 1 January 2022 should have triggered an intervention from Revolut due to its value and the pattern of payments. And they felt that if Revolut had intervened, there were enough hallmarks of a scam that they could have revealed the scam and prevented further payments from being made. But they felt the redress should be reduced by 50% to account for Ms H's contribution to the loss.

Ms H accepted the outcome but Revolut disagreed and did not think the payments appeared unusual and instead felt they mirrored a genuine investment.

As an informal agreement could not be reached, 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.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

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 Ms H modified the starting position described in *Philipp*, by 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*".

So Revolut was required by the implied terms of its contract with Ms H and the Payment Services Regulations to carry out their instructions promptly, except in the circumstances set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

Whether or not Revolut was required to refuse or delay a payment for one of the reasons set out in its contract, the basic implied requirement to carry out an instruction promptly did not in any event mean Revolut was required to carry out the payments immediately¹. Revolut

¹ The Payment Services Regulation 2017 Reg. 86 states that "the payer's payment service provider must ensure that the amount of the payment transaction is credited to the payee's payment service

could comply with the requirement to carry out payments promptly while still giving fraud warnings, or making further enquiries, prior to making the payment.

And, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good industry practice at the time, Revolut should in November 2021 fairly and reasonably 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 (irrespective of whether it was also required by the express terms of its contract to do so).

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 do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;²
- 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.

In reaching my conclusions about what Revolut ought fairly and reasonably to have done, 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)
- 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

provider’s account **by the end of the business day following the time of receipt of the payment order**” (emphasis added).

² 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/>

Revolut's obligation to monitor its customer's accounts and scrutinise transactions.

- The October 2017, BSI Code³, 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.

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 November 2021 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.

Should Revolut have recognised that Ms H was at risk of financial harm from fraud?

I've looked over Ms H's account statements and while I can see she held a Revolut account for around a year prior to the scam starting, she rarely used it for purchases. Because of this, there was not a lot of genuine transactions that Revolut could compare the scam payments to.

The initial payment was not particularly out of character for the account, so I don't think this

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

should reasonably have flagged as unusual at the time. The next three payments all went to the same new payee and I can see they went on consecutive days. The amounts also increased each day, which when paired with the increasing values fits the pattern of possible financial harm. With this in mind, I think the payment of £5,000 posed a scam risk and Revolut should reasonably have recognised Ms H was at risk of financial harm.

What did Revolut do to warn Ms H?

Revolut provided Ms H with a new payee warning that said:

“Do you know and trust this payee?

If you're unsure, don't pay them, as we may not be able to help you get your money back. Remember that fraudsters can impersonate others, and we will never ask you to make a payment”

While this warning does contain some information relevant to Ms H's circumstances, the warning isn't particularly prominently displayed, requires no interaction or real engagement from the customer and, in my view, lacks sufficient context to have been impactful in the circumstances of this case. No additional warning was provided for the later payments.

What kind of warning should Revolut have provided?

Due to the increasing value and frequency of payments, I think Revolut should have intervened prior to the payment of £5,000 being processed on 1 January 2022. And I think Revolut needed to establish the circumstances surrounding the payment before allowing it to debit the account. I therefore think it should have referred Ms H to the in-app chat for additional questions about the payment.

If Revolut had provided a warning of the type described, would that have prevented the losses Ms H suffered from the £5,000 payment?

I've considered whether a conversation with Ms H at that time about the payment would reasonably have uncovered the scam. I think it would have been reasonable for Revolut to have asked what the payment was for, how she came across the investment and if she was being guided or helped by someone else.

I think it's more likely Ms H would have explained she was making investments and she found an individual on social media who had introduced her to the platform and was helping her with the process. And I think she would have explained that bots were making trades on her behalf using trading algorithms, but she had access to the platform. On balance, I think this would have been enough of an indication of a scam that Revolut could have provided a tailored investment scam warning and uncovered the scam. As Revolut have highlighted in their submission to our service, there were websites highlighting C as a potential scam online that Ms H could have gone away and found.

With all of this in mind, I think an intervention from Revolut on the £5,000 payment would likely have uncovered the scam at that point and prevented further payments from being made.

Is it fair and reasonable for Revolut to be held responsible for Ms H's loss?

In reaching my decision about what is fair and reasonable, I have taken into account that Ms H purchased cryptocurrency which credited an e-wallet held in her own name, rather than making a payment directly to the fraudsters. So, she remained in control of her money after

she made the payments from her Revolut account, and it took further steps before the money was lost to the fraudsters.

I have carefully considered Revolut's view that in a multi-stage fraud, a complaint should be properly considered only against either the firm that is a) the 'point of loss' – the last point at which the money (or cryptocurrency) remains under the victim's control; or b) the origin of the funds – that is the account in which the funds were prior to the scam commencing. It says it is (in this case and others) merely an intermediate link – being neither the origin of the funds nor the point of loss and it is therefore irrational to hold it responsible for any loss.

In reaching my decision, I have taken into account that the final payment was made to another financial business (a cryptocurrency exchange) and that the payments that funded the scam were made from another account at regulated financial businesses.

But as I've set out above, I think that Revolut still should have recognised that Ms H might have been at risk of financial harm from fraud when they made the £5,000 payment, and in those circumstances Revolut should have made further enquiries about the payment before processing it. If it had done that, I am satisfied it would have prevented the losses Ms H 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 Ms H's own account does not alter that fact and I think Revolut can fairly be held responsible for Ms H'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.

Revolut has addressed an Administrative Court judgment, which was referred to in a decision on a separate complaint. As I have not referred to or relied on that judgment in reaching my conclusion in relation to the losses for which I consider it fair and reasonable to hold Revolut responsible, I do not intend to comment on it.

I note that Revolut says that it has not asked me to analyse how damages would be apportioned in a hypothetical civil action but, rather, it is asking me to consider all of the facts of the case before me when considering what is fair and reasonable, including the role of all the other financial institutions involved. I have done so in this case and found the third-party bank did not intervene in any of the payments involved in this scam. As they did not provide any warnings or carry out a more detailed intervention, I don't think their actions have any impact on the outcome on this case.

Should Ms H bear any responsibility for her losses?

In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

Having done so, I agree a reduction in the reimbursement of 50% is fair in the circumstances of this case. Ms H says she was told her returns would double in just 2-3 months and I think these should have been seen as too good to be true. And I can see there was some negative information online about C that was available to Ms H had she looked into them.

I therefore think a reduction in the redress of 50% is reasonable to account for Ms H's contribution to the loss incurred.

Putting things right

Revolut should therefore reimburse Ms H with 50% of the loss incurred from the payment of £5,000 on 1 January 2022 onwards.

It should add 8% simple interest to this from the date of the transactions to the date of reimbursement.

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

My final decision

I uphold Ms H's complaint in part. Revolut Ltd should pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 14 February 2025.

Rebecca Norris
Ombudsman