

## **The complaint**

Mrs S complains that Revolut Ltd didn't do enough to protect her from the financial harm caused by an investment scam, or to help her recover the money once she'd reported the scam to it.

## **What happened**

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mrs S saw an advert on social media for an investment company, which I'll refer to as "Y". She made an enquiry and was contacted by someone claiming to be a broker who I'll refer to as "the scammer". The scammer told Mrs S she could make money by investing in metals and cryptocurrency and advised her to use a trading platform which I'll refer to as "M".

Mrs S looked at reviews about Y and M on Trust Pilot and didn't see anything concerning. There were some mixed reviews about Y, but the scammer said they were posted by their competitors.

The scammer said she could begin with an initial investment of £250, which she paid using a credit card with another bank. The scammer advised her to open an account with Bank M and to first purchase cryptocurrency through a cryptocurrency exchange company before loading it onto an online wallet. She transferred funds from her other accounts to Bank M and made seven payments from Bank M via an online payments service between 27 July 2022 and 22 November 2022. When the final payment from Bank M was rejected by the merchant, the scammer told Mrs S to open an account with Revolut. Between 24 November 2022 and 22 February 2023, she made five transfers from Revolut to a cryptocurrency exchange company which I'll refer to as "B".

Mrs S was able to monitor her investment on the trading platform, but when she asked to make a withdrawal, she was told she'd have to pay taxes to release her funds. And when she still didn't receive any money, spoke to a family member who alerted her to the scam.

She complained to Revolut when she realised she'd been scammed, but it refused to refund any of the money she'd lost and stated that it didn't have enough information to raise a chargeback request.

Mrs S complained to this service with the assistance of a representative who argued the transactions were out of character because they were significantly larger and more frequent than the previous spending on the account and she was paying a cryptocurrency merchant, so the payments were higher risk. They argued that if Mrs S had been questioned about the payments, she'd have disclosed that she'd been speaking with an unregulated broker, she'd been advised to set up a new bank account, she was using M, and she had little to no knowledge of cryptocurrency trading. With this information, Revolut would have detected the scam and the loss would have been prevented.

Revolut confirmed that Mrs S wasn't given any warnings and there were no interventions. It said she'd authorised the transfers, and, as a financial institution, it was under an obligation to follow the instructions promptly and correctly. It said the first payment on 23 November 2022 was approved via 3DS and Mrs S wasn't required to select a payment reason.

It said the first payment on the account was to a cryptocurrency merchant, which was essential in establishing the nature and purpose of the account and subsequent payments to the same merchant further reinforced the understanding that the account's primary intention was for engaging in crypto-related activities, so the payments weren't considered out of character.

It said that, typically, this type of account is opened and used to facilitate payments to cryptocurrency wallets, so the payments weren't out of character with the typical way in which an EMI account is used. Further, Mrs S was paying an account in her own name with a legitimate cryptocurrency merchant, there was no payment history to compare the payments with and Mrs S was making regular payments to an account in her own name over a period of three months.

It also said the transactions were made for the purpose of moving funds to her cryptocurrency account and the transactions weren't fraudulent and what a customer does with their funds outside of the Revolut app isn't in its control or jurisdiction.

Our investigator thought the complaint should be upheld. She said Revolut ought to have been concerned when Mrs S made the £10,000 payment on 24 November 2022 because it was the first payment from a newly opened account, it was for a significant amount and she was paying a cryptocurrency merchant, which is a high-risk merchant.

She said Mrs S should have been asked whether there was a broker involved, how she'd found out about the investment, whether she'd done any research, whether she'd checked the Financial Conduct Authority ("FCA") website, whether she'd made any withdrawals, whether anyone was pressuring her to make an investment and whether she was being asked to pay money to release funds. Had it done so she thought it was likely she'd have explained that she came across Y on social media, she'd been told to open a trading account as well as accounts with Bank M and Revolut and she'd withdrawn £40 at the start of the investment.

Our investigator was satisfied that there were enough red flags present that, even though she was paying a legitimate cryptocurrency exchange, Revolut should have warned her there was a high risk she was falling victim to a scam and advised her not to make the payment. And there was no reason to think Mrs S wouldn't have listened to this advice, so Revolut's failure to intervene represented a missed opportunity to have prevented her loss, so it should refund the money from the first payment onward.

However, she thought the settlement should be reduced by 50% for contributory negligence because the messages between Mrs S and the scammer show she'd questioned whether M was a legitimate trading platform. She'd also stated that she was nervous about investing and questioned why she needed to pay taxes after being told she wouldn't need to pay to withdraw her funds. Our investigator explained that if Mrs S had looked at Trust Pilot and done some general research, she'd have seen information about scams involving M which might reasonably have led her to seek advice from other sources.

Revolut asked for the complaint to be reviewed by an Ombudsman, arguing that Mrs S continued to send funds to the scam from Revolut after a £10,000 payment was rejected. It also argued that it's bound by contract, applicable regulations, and the common law to execute valid payment instructions in accordance with the instructions the customer inputs into

the Revolut app. It has cited the Supreme Court's judgment in *Philipp v Barclays Bank UK plc* [2023] UKSC 25 where the Court held that in the context of APP fraud, where the validity of the instruction is not in doubt, no inquiries are needed to clarify or verify what the bank must do.

It further argued that it's not required to reimburse customers for self-to-self transactions as the payments are leaving Revolut to an account held by and accessed by the customer at another financial institutions and it is irrational to hold it liable in circumstances where it is merely an intermediate link, as there are typically other authorised banks and other financial institutions in the payment chain that have comparatively greater data on the customer than Revolut.

### **My provisional findings**

I was satisfied Mrs S 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of her bank account, Mrs S is presumed liable for the loss in the first instance.

There's no dispute that this was a scam, but although Mrs S didn't intend her money to go to scammers, she did authorise the disputed payments. Revolut is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

### *Prevention*

Revolut was an emoney/money remittance provider and at the time these events took place it wasn't subject to all of the same rules, regulations and best practice that applied to banks and building societies. But it was subject to the FCA's Principles for Businesses and BCODS 2 and owed a duty of care to protect its customers against the risk of fraud and scams so far as reasonably possible.

I thought about whether Revolut could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I'd seen, the payments were made to a genuine cryptocurrency exchange company. However, Revolut ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I needed to consider whether it ought to have intervened to warn Mrs S when she tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Revolut to intervene with a view to protecting Mrs S from financial harm due to fraud.

The payments didn't flag as suspicious on Revolut's systems. This was a newly opened account and so there was no previous spending to compare the payments with, and B is a legitimate cryptocurrency merchant. However, on 24 November 2022, as Mrs S was paying £10,000 to a cryptocurrency merchant from a newly opened account and the payment wasn't in line with the account opening purpose, I thought Revolut should have provided a written warning which was tailored to cryptocurrency scams.

When she was making payments to the scam from Bank M, it provided a 'new payee' warning when she set up the first payment, as well as a 'scam' warning when the subsequent payments were made. I accepted Mrs S went ahead with the payments from Bank M having received a scam warning before each payment, but this wasn't tailored to cryptocurrency investment scams, so I didn't think her responses to Bank M's warnings were

indicative of what she'd have done following a tailored cryptocurrency scam warning from Revolut.

However, Mrs S listened to the scammer's explanation for the negative reviews she'd seen on Trust Pilot before she decided to go ahead with the investment. And when she opened the Revolut account, she said the account purpose was 'budgeting, rewards, and transfers', something she was likely instructed to do by the scammer, in the same way she was told to start making payments from Revolut when the final payment from Bank M was rejected by the merchant.

In considering how Mrs S would have reacted to a tailored cryptocurrency scam warning, I was mindful that she was never given a relevant or effective warning. But, while these examples are not evidence of Mrs S having ignoring warnings or advice from her bank, they show she trusted the scammer, he was guiding her around her dealings with her banks, and, critically, she was open to following this guidance.

If the warning from Revolut had mentioned the involvement of a broker, adverts on social media, small initial investments and onwards payments from cryptocurrency exchanges, I thought it might have caused Mrs S to pause before making the payment. But, based on her conduct leading up to this point, I thought she'd have sought the scammer's advice, and, as she wouldn't have been interacting with one of Revolut's agents, I thought he'd have been able to persuade her that the investment was genuine and to ignore the warning. So, while I did think Revolut missed an opportunity to intervene, I didn't think this represented a missed opportunity to have prevented the scam.

### *Compensation*

The main cause for the upset was the scammer who persuaded Mrs S to part with her funds and as I haven't found any errors or delays to Revolut's investigation, I didn't think she was entitled to any compensation.

### *Recovery*

I didn't think there was a realistic prospect of a successful recovery because Mrs S paid an account in her own name and moved the funds onwards from there.

### **Developments**

Mrs S's representative has told us that she doesn't accept my provisional findings.

The representative has stated that the explanation given by the scammer about the negative reviews was plausible, and that it's unfair to assume Mrs S wouldn't have heeded a tailored written warning because she went ahead with the investment having seen the mixed reviews. They've argued that it's not unusual for customers to trust companies that have mixed reviews and that we frequently assess the research that a consumer has done to consider whether a contributory negligence deduction should be applied, rather than rejecting the case in full, so my provisional findings are inconsistent with the wider view of this Service when it comes to mixed reviews.

The representative has also argued that if Revolut had provided relevant warnings and advised her that no legitimate investment company would operate without FCA authorisation, ask her to create new bank accounts, or to pay withdrawal fees or taxes, Mrs S would have discussed her concerns with her husband or the bank, and the scam would have been uncovered (in the same way the scam was eventually uncovered).

Finally, they've commented that when Mrs S opened the account with Revolut, she chose the account purpose as 'budgeting, rewards, and transfers', which indicates she didn't receive instructions on what account purpose to select.

### **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've considered the additional comments made by Mrs S's representative, but I'm afraid the findings in my final decision will be the same as the findings in my provisional decision.

Mrs S's representative has argued the account purpose Mrs S chose when she opened the Revolut account shows she wasn't coached on which option to choose, but it wasn't the most appropriate option and, considering she'd opened both the Revolut and Bank M accounts on the scammer's advice, I think it's more likely than not that she was guided by the scammer on which account purpose to select.

I accept it won't always be unreasonable for a consumer to go ahead with an investment having seen negative or mixed reviews online, and that we often consider whether they've seen negative reviews as a factor in our assessment of whether a settlement should be reduced for contributory negligence. I agree the explanation is plausible, but as part of my assessment of whether a tailored written warning from Revolut would have made a difference to Mrs S's decision to make the payments, I consider this is evidence that the scammer was guiding her around her dealings with her banks and that she was open to following this guidance.

I maintain the evidence supports that the scammer would have been able to persuade Mrs S that the investment was genuine and to ignore a tailored written warning from Revolut, and while I accept she was eventually alerted to the scam by her husband, this was towards the end of the scam period when she'd been prevented from making a withdrawal. Significantly, I remain satisfied that in November 2022, Mrs S trusted and was being guided by the scammer to the extent that she would have sought and listened to the scammer's advice about the warning.

I'm sorry to hear Mrs S has lost money and the effect this has had on her. But for the reasons I've explained, I don't think Revolut is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 16 December 2024.

Carolyn Bonnell  
**Ombudsman**