

The complaint

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

What happened

Ms W found an investment opportunity on social media, that was being endorsed by multiple well-known celebrities. Unfortunately, this turned out to be a scam. Ms W opened a new account with Revolut as part of the scam, as well as a cryptocurrency wallet. She also downloaded screensharing software so the scammer could help her with the trades. Ms W made the following payments from her Revolut account towards cryptocurrency:

| Date | Amount |
|------------|-----------|
| 10/08/2023 | £1,000 |
| 11/08/2023 | £1,900 |
| 11/08/2023 | £3,495.71 |
| 11/08/2023 | £1,573.08 |

Following this, Ms W asked to withdraw her returns and received an e-mail from the cryptocurrency exchange asking her to pay £9,400 to release the funds. Ms W realised at that point that she had been the victim of a scam. She raised a scam claim with Revolut who explained they had no chargeback rights so could not recover her funds. So they did not agree to reimburse her.

Ms W referred the complaint to our service and our investigator looked into it. They felt the payment of £3,495.71 was unusual and warranted a tailored cryptocurrency investment scam warning from Revolut. And they thought it was more likely this would have revealed the scam, so they recommended a refund for the final two payments. But they felt the redress should be reduced by 50% to account for Ms W's contribution to the loss.

Ms W accepted the findings, but Revolut did not. In summary, they said that Ms W had made the payments to another account within her control, so the point of loss was not with them. And that other banks were involved in the payment journey who should share responsibility.

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 the consumer 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*".

In this respect, section 20 of the terms and conditions said:

"20. When we will refuse or delay a payment

We must refuse to make a payment or delay a payment (including inbound and outbound payments) in the following circumstances:

- *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 the consumer and the Payment Services Regulations to carry out their instructions promptly, except in the circumstances expressly set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

I am satisfied that, to comply with regulatory requirements (including the Financial Conduct Authority's "Consumer Duty", which requires financial services firms to act to deliver good outcomes for their customers) Revolut should in August 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.

So, Revolut's standard contractual terms produced a result that limited the situations where it could delay or refuse a payment – so far as is relevant to this complaint – to those where applicable regulations demanded that it do so, or that it make further checks before

proceeding with the payment. In those cases, it became obliged to refuse or delay the payment. And, I'm satisfied that those regulatory requirements included adhering to the FCA's Consumer Duty.

The Consumer Duty – as I explain below – requires firms to act to deliver good outcomes for consumers.

Whilst the Consumer Duty does not mean that customers will always be protected from bad outcomes, Revolut was required act to avoid foreseeable harm by, for example, operating adequate systems to detect and prevent fraud. The Consumer Duty is therefore an example of a regulatory requirement that could, by virtue of the express terms of the contract and depending on the circumstances, oblige Revolut to refuse or delay a payment notwithstanding the starting position at law described in *Philipp*.

I have taken both the starting position at law and the express terms of Revolut's contract into account when deciding what is fair and reasonable. I am also mindful that in practice, whilst its terms and conditions referred to both refusal and delay, the card payment system rules meant that Revolut could not in practice delay a card payment, it could only decline ('refuse') the payment.

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

- using algorithms to identify transactions presenting an increased risk of fraud;¹
- 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.

¹ 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/

For example, it is my understanding that in August 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).
- 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 Code², 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).
- Since 31 July 2023, under the FCA’s Consumer Duty³, regulated firms (like Revolut) must act to deliver good outcomes for customers (Principle 12) and must avoid causing foreseeable harm to retail customers (PRIN 2A.2.8R). Avoiding foreseeable harm includes ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm (PRIN 2A.2.10G). One example of foreseeable harm given by the FCA in its final non-handbook guidance on the application of the duty was *“consumers becoming victims to scams relating to their financial products for example, due to a firm’s inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the*

² BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

³ Prior to the Consumer Duty, FCA regulated firms were required to “pay due regard to the interests of its customers and treat them fairly.” (FCA Principle for Businesses 6). As from 31 July 2023 the Consumer Duty applies to all open products and services.

*effectiveness of scam warning messages presented to customers*⁴.

- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency⁵ 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 August 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;
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;
- 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

⁴ The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

⁵ Keeping abreast of changes in fraudulent practices and responding to these is recognised as key in the battle against financial crime: see, for example, paragraph 4.5 of the BSI Code and PRIN 2A.2.10(4)G.

what is fair and reasonable, I am satisfied that to comply with the regulatory requirements that were in place in August 2023, Revolut should in any event have taken these steps.

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

It isn't in dispute that Ms W fell victim to a cruel scam, nor that she authorised the card payments to her cryptocurrency wallet (from where that cryptocurrency was subsequently transferred to the scammer).

By August 2023, when these transactions took place, firms like Revolut had been aware of the risk of multi-stage scams involving cryptocurrency 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 scams 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 August 2023, when these payments took place, further restrictions were in place. This left a smaller number of payment service providers, including Revolut, that allowed customers to use their accounts to purchase cryptocurrency with few restrictions. These restrictions – and the reasons for them – would have been well known across the industry.

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 a significant 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, a fact that Revolut is aware of.

So, taking into account all of the above I am satisfied that by the end of 2022, prior to the payments Ms W made in August 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, good practice and to comply with regulatory requirements, Revolut should have had appropriate systems for making checks and delivering warnings before it processed such payments.

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

So, I've gone on to consider, taking into account what Revolut knew about the payments, at what point, if any, it ought to have identified that Ms W might be at a heightened risk of fraud that merited its intervention. I can see that Ms W used a new Revolut account to facilitate the payments, so there were very few genuine payments to compare the scam payments to. On

balance, I think the initial two payments were of a relatively low value, and I would not have expected Revolut to intervene in these.

However, I think the card payment of £3,495.71 was unusual. This was for a higher value and followed an increasing pattern of value and frequency of payments to cryptocurrency on the account. It also followed two declined transactions to cryptocurrency just minutes before. The total attempted so far that day was over £5,000 to cryptocurrency following this payment.

On balance, I think this could have been seen as unusual and should reasonably have been a sign that Ms W may be at risk of financial harm. In line with good industry practice and regulatory requirements I am satisfied that it is fair and reasonable to conclude that Revolut should have warned its customer before this payment went ahead.

What did Revolut do to warn Ms W?

Revolut did stop an earlier payment of £1,950 that was attempted on 11 August 2023. It froze the debit card connected to the account and highlighted this payment as suspicious, and asked Ms W to authorise the transaction by unfreezing the card. Ms W did so and was able to continue making card payments to cryptocurrency exchanges.

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 primary duty to make payments promptly.

As I've set out above, the FCA's Consumer Duty, which was in force at the time these payments were made, requires firms to act to deliver good outcomes for consumers including acting to avoid foreseeable harm. In practice this includes maintaining adequate systems to detect and prevent scams and to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers.

I'm mindful that firms like Revolut have had warnings in place for some time. It, along with other firms, has developed those warnings to recognise both the importance of identifying the specific scam risk in a payment journey and of ensuring that consumers interact with the warning.

In light of the above, I think that by August 2023, when these payments took place, Revolut should have had systems in place to identify, as far as possible, the actual scam that might be taking place and to provide tailored, effective warnings relevant to that scam for both APP and card payments. I understand in relation to Faster Payments it already had systems in place that enabled it to provide warnings in a manner that is very similar to the process I've described.

I accept that any such system relies on the accuracy of any information provided by the customer and cannot reasonably cover off every circumstance. But I consider that by August 2023, on identifying a heightened scam risk, a firm such as Revolut should have taken reasonable steps to attempt to identify the specific scam risk – for example by seeking further information about the nature of the payment to enable it to provide more tailored warnings.

In this case, Revolut knew that the payment for £3,495.71 was being made to a cryptocurrency provider and its systems ought to have factored that information into the

warning it gave.

Revolut should also have been mindful that cryptocurrency scams have become increasingly varied over the past few years. Fraudsters have increasingly turned to cryptocurrency as their preferred way of receiving victim's money across a range of different scam types, including 'romance', impersonation and investment scams.

Taking that into account, I am satisfied that, by August 2023, Revolut ought to have attempted to narrow down the potential risk further. I'm satisfied that when Ms W made the

payment of £3,495.71, Revolut should – for example by asking a series of automated questions designed to narrow down the type of cryptocurrency related scam risk associated with the payment she was making – have provided a scam warning tailored to the likely cryptocurrency related scam Ms W was at risk from.

In this case, Ms W was falling victim to an investment scam. As such, I'd have expected Revolut to have asked a series of simple questions in order to establish the risk the payment presented. Once that risk had been established, it should have provided a warning which was tailored to that risk and the answers Ms W gave. I'd expect any such warning to have covered off key features of such a scam, such as investments being advertised by celebrities, significant returns being promised or guaranteed, the presence of screen sharing software and an advisor helping with the investment.

I acknowledge that any such warning relies on the customer answering questions honestly and openly, but I've seen nothing to indicate that Ms W wouldn't have done so here. She has not mentioned being given a cover story or told to mislead her account provider, so I think it is more likely she would have been honest in her answers.

While I accept that under the relevant card scheme rules Revolut cannot delay a card payment, but in the circumstances of this case, I think it is fair and reasonable to conclude that Revolut ought to have initially declined the £3,495.71 payment in order to make further enquiries and with a view to providing a specific scam warning of the type I've described. Only after that scam warning had been given, if Ms W attempted the payment again, should Revolut have made the payment.

And Revolut did have systems in place by August 2023 to decline card payments and provide warnings of a similar nature to the type I've described. So, it could give such a warning and, as a matter of fact, was providing such warnings at the relevant time.

If Revolut had provided a tailored warning would that have prevented the losses Ms W suffered?

On balance, I think it is more likely a tailored warning would have revealed the scam and prevented Ms W from making further payments. The scam Ms W fell victim to had many hallmarks of a typical cryptocurrency investment scam which Revolut should have included in a warning. For example:

- she found the opportunity on social media and it was (falsely) endorsed by celebrities,
- she was told to download screen sharing software,
- she was told she could receive significant returns in just minutes,
- she had an advisor helping her with her trades.

These are all common features of cryptocurrency investment scams so I think it is more likely Ms W would have recognised the features that applied to her situation. I have also considered that when Ms W received a fake e-mail asking her for £9,400 to release her returns, she declined and went on to ignore multiple messages from the scammer. I think this shows she was receptive to red flags and that it's more likely she would have also been receptive to a tailored warning from her account provider.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Ms W 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 in some detail above, I think that Revolut still should have recognised that Ms W might have been at risk of financial harm from fraud when she made the payment of £3,495.71, 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 Ms W 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 W's own account does not alter that fact and I think Revolut can fairly be held responsible for her 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 Ms W 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 Ms W could instead, or in addition, have sought to complain against those firms. But she 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 Ms W'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 Ms W's loss from the payment of £3,495.71 onwards (subject to a deduction for Ms W's own contribution which I will consider below).

Should Ms W bear any responsibility for her losses?

I've finally considered whether or not Ms W should reasonably bear some responsibility for the losses as a result of any negligence in her actions and if it is therefore reasonable for me to make a reduction in the award based on this. In doing so, I've considered whether Ms W has acted as a reasonable person would to protect herself against the loss she suffered. The test is objective but needs to take account of the relevant circumstances.

In doing so, I have to consider that Ms W thought the investment was being endorsed by well-known celebrities alongside a well-known television program, so I can understand why she was initially convinced. However, a search of the company name would have shown a warning from the Financial Conduct Authority that they were not authorised, and they recommended that customers only deal with authorised firms.

In addition to this, Ms W was promised returns of around £23,000 within minutes of her investing £7,000 with the company. On balance, I think these returns could have been seen as too good to be true. With the above in mind, I think it is reasonable for Revolut to reduce the reimbursement by 50% to account for Ms W's contribution to the loss.

Putting things right

Revolut should reimburse Ms W from the payment of £3,495.71 onwards. It can reduce the redress by 50% to account for Ms W's contribution to the loss.

It should also include 8% simple interest from the date of the transactions to the date of settlement.

If Revolut considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms W how much it's taken off. It should also give her 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 W's complaint in part. Revolut should not pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 3 April 2025.

Rebecca Norris

Ombudsman