

The complaint

Mr K complains that Revolut Ltd didn't reimburse him funds he lost as a result of falling victim to an investment fraud.

What happened

As the circumstances of this complaint are well-known to both parties, I've summarised them briefly below.

In 2022, Mr K found an advertisement on a social networking platform for an investment opportunity. Mr K clicked on the link and was directed to a page where he provided his personal information.

He then received an email introducing him to the investment opportunity and providing a personal financial advisor. Unfortunately, unbeknown to Mr K at the time, he was in fact speaking with a person intent on defrauding him.

Mr K exchanged messages with the fraudster on a messaging platform and was instructed to make payments toward the investment. Mr K moved money from an account with a third-party bank to his Revolut account. He then made the following payments from his Revolut account to the fraudster:

6 July 2022	£2,000
11 July 2022	£15,000
18 July 2022	£4,300

Once Mr K had noticed returns on his online investment account, he asked to withdraw some of the funds. The fraudster informed Mr K that in order to do this he'd need to make another significant payment for fees. Mr K became suspicious at this stage and uncovered the fraud.

He reported the matter to Revolut who looked into his claim and attempted to recover the funds lost from the beneficiary bank. Revolut concluded that it wasn't at fault. It said that it processed the payments as instructed and pointed out that Mr K ought to have done more to protect himself.

Mr K remained unhappy with the outcome of his claim, so he approached our service for an independent review. An Investigator considered the evidence and testimony provided by both parties but didn't recommend Mr K's funds be reimbursed. They concluded that while Revolut ought to have done more to protect Mr K, any intervention likely wouldn't have prevented Mr K's loss as he was instructed by the fraudster to be dishonest as to the purpose of the payments.

Mr K, through his representative, disagreed with the Investigator's conclusions. So the

matter has now been passed to me for a decision to be made.

On 29 October 2024 I issued my provisional findings to both parties setting out what I was minded to conclude. I gave both parties until 25 November 2024 to provide any additional comments or evidence before issuing my final decision. Those provisional findings were as follows:

“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 Mr K 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 Mr K 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 July 2022 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)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.*

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/

³ 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.

- *The October 2017, BSI Code⁴, 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).*

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

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

Should Revolut have recognised that Mr K was at risk of financial harm from fraud?

Mr K opened his account with Revolut approximately five months before the payments were made to the fraudster in July 2022. Mr K had used his account regularly in this period and I find Revolut would have had a general idea as to how he operated his account.

In the period before the fraudulent transactions were made, Mr K generally used his account for low value card payments, transfers and money exchange. There is one occasion where Mr K made a higher value transfer to a third-party account, but this stands out from the general account activity.

The first of the three payments made was for £2,000. As this was in line with Mr K's limited account activity—in that he did make occasional higher payments—I don't find this payment was particular concerning enough to warrant a substantive intervention. Revolut did display a generic warning when setting up this payment asking Mr K if he knew and trusted the payee; it also warned him that he may not be able to get his money back and that fraudsters can impersonate others.

While this warning wasn't specific to Mr K's circumstances, I don't find Revolut ought to have done any more here when processing the first of the three payments.

The second payment of £15,000 however was significantly out of character for Mr K's normal account activity. The value of the payment was many times above the highest payment Mr K had ever made and was paid to a payee that had only been set five days prior. These factors ought to have concerned Revolut. And I find those risk indicators sufficiently significant to have warranted a human intervention, whether that be by contacting Mr K by telephone or directing him to their in-app chat facility, to ensure he wasn't at risk of financial harm.

⁴ BSI: PAS 17271: 2017" Protecting customers from financial harm as result of fraud or financial abuse"

What kind of warning should Revolut have provided, and would this have likely prevented further loss?

Had Revolut contacted Mr K and probed the purpose of the payment, I think it's likely he would have disclosed the true reasons for that payment. While Mr K was coached regarding what to tell his bank—where the funds originated from—what the payment was for, this wasn't necessarily the case when making the payment from his Revolut account. And While Mr K was asked to lie to his bank regarding the payment purpose, it never intervened in those payments. So, Mr K had no cause to lie when processing the payment.

Mr K has told our service that it was the bank he was warned about not disclosing the true reason for the payments: as they don't approve of payments to crypto. The fraudster did say however that Revolut were faster, easier and crypto friendly. We've also asked Mr K what he might have said had he'd been challenged, and Mr K has given quite a frank and honest answer – that he doesn't know, but he wasn't very good at lying. So, I see no reason why Mr K wouldn't have been honest with Revolut when considering these factors.

Furthermore, contacting Mr K via the in-app chat, or by telephone, would have allowed a representative of Revolut to probe further than the purpose of the payment.

As the real reason Mr K was transferring the funds would have been disclosed or uncovered by Revolut as part of an intervention, it would have been clear he'd fallen victim to an investment scam. The features present in Mr K's circumstances are typical of common investment scams, and this would have been evident to Revolut. This would have allowed it to provide Mr K with the relevant warnings and point out the common features of these scams. I'm persuaded this would have prevented any further payments being made.

Should Mr K bear any responsibility for their 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.

Mr K found the investment advertised on a well-known social networking platform. And I can appreciate that this gave it an air of legitimacy considering one would expect such adverts to be vetted prior to being displayed.

However, Mr K says that prior to investing, he carried out a limited amount of research on the firm he was investing with. He says he looked on the FCA website for any warnings and saw positive reviews on a well-known review website. But having carried out research of my own I can't see any reviews of this business until after Mr K transferred the funds from his account.

Further, Mr K was never provided with any official documentation or contracts setting out the investment opportunity – something that would be reasonably expected from a legitimate business. Mr K was also provided with unrealistic returns on his investment. Firstly, circa £90-£150 per day on a £2,000 investment and then a £7,000 return on a £15,000 investment within 28 days. While I understand these were not guaranteed returns, the amounts being claimed should have alerted Mr K's to a to-good-to-be-true opportunity.

Having said the above, I do understand Mr K was an inexperienced investor and may not have been entirely familiar with certain processes. I also acknowledge he was given access to an online platform that appeared professional and displayed the growth and status of his investment.

Lastly, Mr K was instructed by the third-party to be dishonest with legitimate businesses on more than one occasion. He was instructed to lie to the credit provider he took a loan from regarding the purpose of that loan. And he was told to lie to the bank, where his funds originated from, as the purpose of those payments. This should have also alerted Mr K as to the legitimacy of the purported business.

Considering all these factors collectively, I find Mr K ought to have been taken better care when engaging with the purported investment opportunity and therefore be partially liable for his loss.

Recovery

Mr K provided evidence of the fraud to Revolut over the course of four days via its in-app chat. Once Revolut had received all evidence of the fraud on 24 July 2022 it attempted to recover the funds from the beneficiary bank.

Unfortunately, fraudsters tend to move money out of beneficiary accounts rapidly, and that seems to be the case here, as the beneficiary bank responded letting Revolut know the recovery was unsuccessful.”

As this deadline has now passed, the matter has been passed back to me for a final decision to be made.

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.

Neither party has provided any additional comment or evidence for me to consider following the issue of my provisional findings. I therefore have no reason to depart from them.

Putting things right

For all the above reasons Revolut should reimburse Mr K the money he lost from the £15,000 payment on 11 July 2022. But it should deduct 50% of this to reflect Mr K's liability.

Revolut should also pay 8% simple annual interest on these payments from the date they were made to the date of reimbursement, as it was ought to have done more to prevent the payments being made.

My final decision

For the reasons I've given, I uphold this complaint and direct Revolut Ltd to:

- Pay Mr K £9,650
- Pay 8% simple annual interest on this amount from the date of the payments made to the date of settlement

Stephen Westlake
Ombudsman