

The complaint

Mrs I complains that Revolut Ltd hasn't protected her from losing money to an investment scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat everything here. In brief summary, Mrs I has explained that in September 2022 she made a number of debit card payments from her Revolut account to a crypto exchange ultimately to fund what she thought was a legitimate investment.

The six payments in dispute here were for £5,000 each, so totalled £30,000. The first two payments were instructed on 19 September 2022; and the third, fourth, fifth and six payments were instructed on 21 September 2022. These payments out of Mrs I's Revolut account were funded by way of loans Mrs I obtained from two third-party lenders, who I'll call "N" and "F", which were initially paid into Mrs I's separate bank account with N, before being moved on to her Revolut account and spent from there.

Mrs I subsequently realised she'd been scammed and got in touch with Revolut. Ultimately, Revolut didn't reimburse Mrs I's lost funds, and Mrs I referred her complaint about Revolut to us. As our Investigator couldn't resolve the matter informally, the case has been passed to me for a decision.

I sent Mrs I and Revolut my provisional decision on 19 November 2024. Now both parties have had fair opportunity to respond, I'm ready to explain my 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.

Mrs I told us that she accepts my provisional decision. And Revolut didn't respond to my provisional decision. So, in the absence of evidence or arguments persuading me otherwise, I've reached the same conclusions as in my provisional decision, and for the same reasons. I've explained my reasons again below.

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 Mrs I 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.

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 September 2022 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;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.

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)².
- 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 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

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/

² 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.

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

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.

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 September 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); 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 Mrs I was at risk of financial harm from fraud?

Mrs I's Revolut account was opened in July 2022. And by September 2022 there wasn't yet a material account history for Revolut to tell whether these payments would be unusual or uncharacteristic for Mrs I's account. However, this didn't absolve Revolut of its responsibilities to reasonably and proportionately intervene in scam payments. Revolut has said Mrs I selected the purpose of the account to be for "Spend or save daily" when she opened the account. I'd reasonably expect, when Mrs I instructed her second payment for £5,000 on 19 September 2022, for Revolut to have provided her with a tailored written warning that covered the scam risk identified. And then when Mrs I instructed payment 4 I think Revolut ought to have escalated this.

What did Revolut do to warn Mrs I?

Revolut has said that Mrs I had to authorise these card payments through the 3D Secure system but that, when this was done, it didn't intervene in the payments or warn Mrs I about the possibility she was falling victim to a scam.

What kind of warning should Revolut have provided?

I've already said above that I think Revolut should first have provided Mrs I with a tailored written warning that covered the scam risk identified. I think, however, that when Mrs I instructed payment 4, a proportionate response to the escalation in risk presented by further and continuing large payments in quick succession would have been for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Mrs I's account. I think it should have done this by, for example, directing Mrs I to its in-app chat to discuss the payment further.

If Revolut had provided a warning of the type described, would this have prevented the loss Mrs I suffered?

I'm not persuaded a tailored written warning that covered the scam risk identified would most likely have stopped Mrs I from proceeding with the payments. I say this because it's clear from the WhatsApp messages exchanged between Mrs I and the scammer at the time, that Mrs I had grown to trust the scammer quite considerably. One of the loans had already been taken, and Mrs I was prepared to accept and follow the scammer's coaching on what to say if her bank, N, called her about the payments she was making to her Revolut account. So I'm not persuaded a tailored written warning would have been sufficient to remove Mrs I from this 'spell' or to question any reassurances the scammer may have provided her with. So I don't think Revolut ought reasonably to have been able to prevent Mrs I from making the first three payments. However, by the time of the fourth payment, as I've said, I think the intervention ought to have been more substantial.

I've thought really carefully about this. Mrs I had been messaging the scammer on and off since July 2022. I can see they'd already spoken on the phone. The scammer persuaded Mrs I to take out two loans for "investment purposes". And it's clear Mrs I was coached by the scammer on what to say if her bank, N, called her and asked her about the payments she made from her account with N to her Revolut account: Mrs I has said the scammer advised her to tell N, if it called, that she was transferring her money to her own account with Revolut and therefore everything was fine, and to, if necessary, challenge N as to why it was asking her questions when both accounts (N and Revolut) were in her name. I've also seen messages exchanged between Mrs I and the scammer which show the scammer told Mrs I that she shouldn't mention crypto to N but instead just say she was sending the money to her Revolut account for renovations. Mrs I has also explained that she recalls that N *did* call her about the transfers but it didn't ask her if a third party was involved or whether the payments were being made for an investment. We asked N for evidence of this intervention but it has told us it has no record of it.

Given all this, it's possible that if Revolut had intervened as I think it should have, Mrs I would have sought advice from the scammer and/or not been totally upfront with Revolut about things. But where I can't be sure about something, I need to make up my mind based on the balance of probabilities. And here, I think it's most likely that if Revolut had done what it reasonably should have done, either Mrs I would have realised things weren't right and/or Revolut would not have been satisfied from the ensuing interaction that it was safe to allow her payments through. Such that I think, if Revolut had done what it should have done, Mrs I's loss from the fourth payment onwards would probably have been avoided. I'm mindful here that Mrs I has said that the scammer's instructions to her with regards to *Revolut* were clear: that if Revolut contacted her to ask about her payments, she should say she was transferring the money from her Revolut account to her Binance account to make

investments. And I note that in any event it would have been clear to Revolut from the merchant Mrs I was paying that these were crypto-related payments. There were factors here that really ought to have concerned Revolut upon discovering them – the manner of the advertisement that had enticed Mrs I into this ‘opportunity’, and the involvement of a third party (with payments going first to crypto and then the third party) and remote access software. I acknowledge, of course, it’s possible Mrs I may not have been upfront with Revolut about all this. But Revolut, itself, has said its in-app chat is highly effective at uncovering scams; I’d expect Revolut to have been agile and dynamic in its responses, picking up on the clear signs Mrs I was being scammed; and on balance I do think it most likely ought to have been able to prevent Mrs I’s loss in the circumstances I’ve described.

Is it fair and reasonable for Revolut to be held responsible for Mrs I’s loss?

In reaching my decision about what is fair and reasonable, I have taken into account that Mrs I took out loans with third parties and this money was first moved from her account with N to Revolut, before she made these payments from her Revolut account to the crypto exchange, transferring the funds onto the scammer from there.

But as I’ve set out in some detail above, I think that Revolut still should have recognised that Mrs I might have been at risk of financial harm from fraud when she made the fourth payment, 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 Mrs I suffered from that point onwards. 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 Mrs I’s own account does not alter that fact and I think Revolut can fairly be held responsible for Mrs I’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 Mrs I 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 Mrs I could instead, or in addition, have sought to complain against those firms. But Mrs I 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 Mrs I’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 Mrs I’s loss from the fourth payment onwards (subject to a deduction for Mrs I’s own contribution which I will consider below).

Should Mrs I bear any responsibility for her loss?

I've thought about whether Mrs I should bear any responsibility for the loss of the £15,000 I've said Revolut should have prevented. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in the circumstances of this complaint.

In this case, I don't think it's unfair to say Mrs I really wasn't as careful as she should have been. Not only was she prepared to follow the scammer's coaching on how to handle contact from her bank N, but she took out loans for investment purposes, in circumstances whereby if she'd done more research, as I think she should have done, it's hard to imagine that she wouldn't have seen there were already some troubling reviews about the 'investment' online. And having carefully reviewed the WhatsApp messages exchanged between Mrs I and the scammer, I'm satisfied Mrs I wasn't as discerning or as careful as I'd reasonably expect, such that I'm persuaded it's fair Mrs I shares responsibility for the loss with Revolut, such that Revolut should pay Mrs I 50% of the £15,000 loss, and so £7,500.

Recovery

For completeness, I'll address recovery. After these payments were made, because they were debit card payments, the only potential avenue to recover them would have been through the chargeback scheme. However, Mrs I didn't make the debit card payments to the scammer. Instead, she made them to a legitimate crypto exchange, which would have provided the services intended. So Revolut could only have brought chargeback claims against the crypto exchange (and not the scammer) but these wouldn't have succeeded given the circumstances. So I can't say Revolut therefore unreasonably hindered recovery of the funds.

Interest

I consider 8% simple interest per year fairly reflects the fact Mrs I has been deprived of this money. So Revolut should also pay Mrs I interest on the £7,500 from 21 September 2022 to the date of settlement calculated at this rate.

My final decision

For the reasons explained, I uphold this complaint in part and I direct Revolut Ltd to pay Mrs I:

- £7,500; plus
- interest on this amount calculated at 8% simple per year from 21 September 2022 to the date of settlement (if Revolut deducts tax from this interest, it should send Mrs I the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs I to accept or reject my decision before 1 January 2025.

Neil Bridge
Ombudsman