

## **The complaint**

Mrs R 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 R has explained that in April and May 2022 she made six transfers totalling £60,000 from her Revolut account ultimately for what she thought was a legitimate investment. Mrs R has explained that she previously, in March 2022, 'invested' (or so she thought) £250 with the scammer; and then in April 2022 she was persuaded to make a further investment of £10,000 – which was funded by her first three disputed payments from her Revolut account of £3,000, £2,000 and £5,000 on 14 April 2022, 14 April 2022 and 20 April 2022 respectively. Mrs R has explained that then, on 2 May 2022, she was 'passed' to a 'senior trader' who then suggested and set up her for a much bigger 'investment' that ultimately led to the final three disputed payments from her Revolut account that day for £26,000, £9,000 and £15,000 respectively.

Mrs R subsequently realised she'd been scammed and got in touch with Revolut. Ultimately, Revolut didn't reimburse Mrs R's lost funds, and Mrs R 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 R and Revolut my provisional decision on 20 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 R 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.

### Authorisation

Mrs R hasn't disputed that she authorised the first three payments which occurred in April 2022. I understand, however, that she has suggested that she didn't authorise the last three payments which occurred on 2 May 2022. She said she was getting cold feet by then, and that it was the scammer that made these last three payments from her Revolut account using AnyDesk, on 2 May 2022, without her consent.

The Payment Services Regulations are relevant here. Generally, unless Mrs R authorised a payment, Revolut had no authority to debit her account. There are two parts to authorisation – authentication and consent.

In terms of authentication, the information from Revolut is that these payments were authenticated with biometrics or passcode within Mrs R's Revolut app. I appreciate Mrs R has said the scammers were using AnyDesk. But Revolut says it has controls implemented within its app to prevent remote control such that it wouldn't have been possible for the scammers to initiate and make the transfers without Mrs R's consent. The transactions also took place over more than an hour and were funded from loans disbursed elsewhere, so it seems unlikely they could have taken place without her knowledge. And under The Payment Services Regulations, Mrs R could still fairly be deemed to have consented to Revolut executing the payments, even in circumstances where the scammers were exercising pressure or coercion on Mrs R to authorise them. And overall, in the circumstances, I think these payments were authorised.

### Prevention

However, this isn't the end of the story.

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 Mrs R 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 Mrs R and The Payment Services Regulations to carry out her 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 immediately<sup>1</sup>. Revolut 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 April and May 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;<sup>2</sup>
- 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)<sup>3</sup>.
- 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”*.

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<sup>1</sup> 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 provider’s account **by the end of the business day following the time of receipt of the payment order**” (emphasis added).

<sup>2</sup> 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/](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/)

<sup>3</sup> 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.

- 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 Code<sup>4</sup>, 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 April and May 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

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

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 R was at risk of financial harm from fraud?

Mrs R's Revolut account was opened in March 2022, just shortly before these payments. Revolut has said Mrs R selected the purpose of the account to be "Crypto" and "Transfers". So I don't think I can fairly say that Revolut really did anything wrong by not intervening in Mrs R's first three payments because the activity was consistent with that purpose. However, Mrs R's fourth payment instruction, which was for £26,000, was for a large amount and I think unusual and uncharacteristic enough for Mrs R's account such that Revolut ought to have been on alert Mrs R was at risk of financial harm from fraud or a scam and it should have intervened appropriately before allowing this payment to be sent.

What did Revolut do to warn Mrs R?

Revolut has said that Mrs R would have been warned when paying a new beneficiary: *"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, fraudsters can impersonate others, and we will never ask you to make a payment"*.

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.

Having thought about the risk this payment presented, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Mrs R's account. I think it should have done this by, for example, directing Mrs R to its in-app chat to discuss the payment further.

If Revolut had provided a warning of the type described, would that have prevented the loss Mrs R suffered from the £26,000 payment onwards?

Mrs R's testimony is that she was already getting cold feet at this stage, which I find persuasive given an email I've seen she sent to the scammer that day expressing her discomfort. She's said loans landed in her other accounts (with other payment service providers), funds which were moved to her Revolut account, and the amount of money involved was making her nervous and to re-think things. Now I've said above that I still think it's fair to treat these last three payments as authorised. But I don't doubt it's quite possible Mrs R wasn't totally comfortable by this point and that it may very well not have taken much at this stage – during the in-app intervention – to have made a difference.

We've asked other payment service providers – who I'll call "B" and "N" – which Mrs R also had accounts with and made payments from into her Revolut account, whether they intervened in any of the payments Mrs R made from these other accounts. But the answer is that they didn't. And I have no reason to think Mrs R wouldn't have been upfront with Revolut and I think from the answers Mrs R likely would have given, including the fact that AnyDesk was in play, that Revolut would quickly have been in a position whereby it ought reasonably to have given Mrs R a robust warning that she was in all likelihood being scammed, given the features in play that Revolut ought to have known were common with investment scams.

This was a lot of money to lose and I think Mrs R would likely have been receptive to Revolut's warnings at this stage, so I think this likely would have made a difference and Mrs R wouldn't have proceeded with her last three payments.

#### Is it fair and reasonable for Revolut to be held responsible for Mrs R's loss?

In reaching my decision about what is fair and reasonable, I have taken into account that Mrs R first moved money from her accounts with "N" and "B" before the money was sent on, as it was, from her Revolut account to her crypto account and only then on from there to the scammers.

But as I've set out above, I think that Revolut still should have recognised that Mrs R might have been at risk of financial harm from fraud when she made the £26,000 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 Mrs R 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 Mrs R's own crypto account does not alter that fact and I think Revolut can fairly be held responsible for Mrs R'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 R 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 R could instead, or in addition, have sought to complain against those firms. But Mrs R 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 R'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 R's loss from the £26,000 payment onwards (subject to a deduction for Mrs R's own contribution which I will consider below).

#### Should Mrs R bear any responsibility for her loss?

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. And here I think it is fair to say Mrs R really wasn't as careful with her payments as she reasonably ought to have been. This was an incredibly large amount of money to "invest" without a good understanding of what she was getting involved with. And I really think, bearing in mind what she has said she was being told and asked to do, that she ought to have realised there was a risk of something untoward here, such that I think it's fair that there should be a 50% reduction to the compensation payable to reflect this.

#### Recovery

After the payments were made, I couldn't reasonably expect Revolut to have done anything further until Mrs R notified it of the scam. But I note here that the payments were sent from Mrs R's Revolut account to her account with a legitimate crypto exchange, from where Mrs R then moved the funds onto the scammers. As the payments were made to an account Mrs R owned and controlled (but they'd already been sent on from there to the scammers), I'm satisfied there's nothing Revolut could've reasonably done to recover the funds. So I'm satisfied I can't fairly say Revolut unreasonably hindered recovery of the funds.

### **Putting things right**

I'm satisfied if Revolut had done what it should have done, the loss of Mrs R's payments from the £26,000 onwards most likely would have been avoided. But Mrs R should share responsibility for the loss of these payments. So, for the reasons I've explained, I think it's fair that Revolut pays Mrs R £25,000 (that's 50% of the total of the last three payments totalling £50,000). To compensate Mrs R for having been deprived of this money, Revolut should also pay Mrs R interest on this £25,000, calculated at 8% simple per year from 2 May 2022 to the date of settlement.

### **My final decision**

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

- £25,000; plus
- interest on this amount calculated at 8% simple per year from 2 May 2022 to the date of settlement (if Revolut deducts tax from this interest, it should provide Mrs R with the appropriate tax deduction certificate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 2 January 2025.

Neil Bridge  
**Ombudsman**