

Complaint

Mr T is unhappy that Revolut Ltd didn't refund his losses after he told it he'd fallen victim to a scam.

Background

Mr T became the victim of an investment scam after encountering an advertisement on social media for a company I will refer to as "U." At the time, Mr T believed the company was legitimate. It claimed to offer assistance with cryptocurrency investments and appeared to be endorsed by well-known public figures. Mr T didn't know it at the time, but the investment he was being offered was fraudulent.

Mr T initially made a £500 investment from an account with another bank. Subsequently, the scammers advised him to open a Revolut account. He was told to deposit funds into his Revolut account and then transfer them on to a third-party cryptocurrency exchange. His deposits were then converted into cryptocurrency and transferred into the control of the fraudsters. He did this in the belief that they would help to manage his cryptocurrency holdings on his behalf and earn a generous return. He was told that these trading opportunities could double his money.

Over the course of several days, Mr T made the following payments from his Revolut account:

23 November 2022	£1,029.90
25 November 2022	£3,419.27
3 December 2022	£6,982.72
4 December 2022	£6,194.85

All of these payments were made by card. However, before the first, he had attempted to make a transfer by faster payments. Revolut had concerns about this payment and requested further details from Mr T about the surrounding circumstances.

Mr T informed Revolut that the payment was for *"crypto trading with a broker."* Revolut followed up with several questions, including asking whether Mr T had been promised unrealistic returns, whether someone on social media had encouraged the investment, whether he had conducted independent research, and whether he had been asked to install remote access software. Based on Mr T's responses, Revolut concluded the transaction did not appear suspicious and allowed the payments to proceed.

Mr T later realised he was the victim of a scam when the scammers demanded £25,000 in "tax" before allowing him to withdraw his funds. He reported the matter to Revolut, but it told him that it could not recover his money through the chargeback process. It doesn't appear to have considered if there was any other reason why it might, fairly and reasonably, be expected to refund his losses.

Mr T wasn't happy with the response from Revolut and so he referred his complaint to this service. Our Investigator partially upheld the complaint. While he didn't find fault with

Revolut's handling of the initial payments, he determined that Revolut should have become concerned by the third payment (on 3 December 2022, for £6,982.72). He said it should've been worried about the possibility of an investment scam and provided Mr T with a tailored warning about cryptocurrency investment scams. If it had done so, the Investigator concluded, it was likely Mr T would have recognised the scam and stopped further payments.

The Investigator recommended that Revolut reimburse Mr T for his losses from the third and fourth payments, along with interest. Revolut disagreed with the Investigator's findings, and the complaint was passed to me for a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I issued a provisional decision on 26 November 2024. I wrote:

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. However, 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 T 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 T and the Payment Services Regulations to carry out his 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 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 November 2022 fairly and reasonably have been on the look-out for the possibility of fraud and have taken additional steps, or undertaken 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 undertaken additional checks, before processing payments in some circumstances, I am mindful that in practice all banks and EMLs 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 “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*

¹ The Payment Services Regulation 2017 Reg. 86(1) 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).

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.

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 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 November 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, with which firms are generally more familiar than the average customer;*
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or carried out additional checks, or provided additional warnings, before processing a payment (as in practice Revolut sometimes does).*

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

Revolut did identify a risk of financial harm due to fraud when Mr T first attempted to make a payment. It blocked that attempt and directed him to interact with one of its employees in the chat function of its app.

In my view, its error was in being reassured by the information he shared during that interaction. He revealed that he was making the payment in connection with an investment in cryptocurrency and that a broker was assisting him. I accept he answered the follow up questions about matters such as the promised rate of return and the use of remote access software in such a way that it wouldn't have made Revolut more concerned.

However, there's not really a straightforward way for a broker to manage an individual's cryptocurrency investments on their behalf in the way Mr T believed. I think the fact that he believed a broker was assisting him should've been enough for Revolut to recognise that there was a high risk that he was dealing with a fraudster.

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

Although it asked Mr T several questions to reassure itself, it didn't give him a tailored warning that focused on cryptocurrency scams. During the chat Mr T had with Revolut, the following warnings were worked into the conversation:

It is important to only purchase cryptocurrency from a reputable company.

Scammers often use tactics to trick you into buying cryptocurrencies from fake websites and investment platforms.

[...]

It's important that you do your research and proceed with caution before investing your money. Never share details of your investment account with others and never transfer more money in order to access your funds. If you have any concerns then do not proceed with this investment.

I don't think this was sufficient in the circumstances. In view of what it knew at the time, it should've provided him with a warning that focused on the key features of the most commonly occurring cryptocurrency investment scams. For example, it could have referred to an advertisement on social media, promoted by a celebrity or public figure, a 'broker' or 'trader' acting on their behalf and a small initial deposit which quickly increases in value.

I think it's highly likely that the contents of such a warning would've strongly resonated with Mr T since the most common features of this scam type very closely align with what happened to him. The opportunity was advertised on social media by a well-known public figure and Mr T's "investment" was supposedly being managed on his behalf. If Revolut had explained to him that the presence of such features makes it likely that the investment isn't genuine, it's highly unlikely that he'd have proceeded with the payment.

Is it fair and reasonable for Revolut to be held responsible for Mr T's loss?

In reaching my decision about what is fair and reasonable, I have taken into account that the payments from Mr T's Revolut account weren't the point of loss here. Mr T's transfers went into an account that was managed by a different business before being converted into cryptocurrency and transferred into the control of the fraudsters. It was only when he transferred the cryptocurrency that he experienced any loss attributable to the scam.

However, as I've set out in some detail above, I think that Revolut should still have recognised that he might have been at risk of financial harm from fraud when he made that first payment. In those circumstances it should have warned him appropriately. If it had done so, I am satisfied it would have prevented the losses Mr T went on to suffer. The fact that the money used to fund the scam wasn't lost at the point it was transferred to Mr T's own account does not alter that fact and I think Revolut can fairly be held responsible for his 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 Mr T 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 he could instead, or in addition, have sought to complain against those firms. But he's not chosen to do that and

ultimately, I cannot compel him to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mr T'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 Mr T's loss from the first payment (subject to a deduction for his own contribution which I will consider below).

Should Mr T bear any responsibility for his losses?

I've also considered whether Mr T should fairly and reasonably bear any responsibility for his own losses. In doing so, I've taken into account what the law says about contributory negligence while keeping in mind that I must decide this case based on what I consider to be fair and reasonable in the circumstances.

Unfortunately, there is very little evidence to show what information was provided to Mr T at the time. It's hard for me to know for sure what he was told about how the investment would work and, therefore, whether it was reasonable of him to accept what he was told. He has been able to provide copies of emails he exchanged with the fraudsters. I understand this is the only remaining evidence of his contact with them. Unfortunately, these emails all came after the payments above were made.

The evidence that's been provided also suggests that there was no formalisation of the agreement between Mr T and the company he believed was investing his money – no written contract, no terms and conditions and no promotional literature. I'm surprised that Mr T was willing to go ahead with investing such a significant amount of money without any of these things.

It's common in scams such as this one for the fraudsters to entice would be investors by promising unrealistically generous returns. I don't know for sure if that happened here. I can see in those emails that the apparent value of his investment had risen from around £18,000 to nearly £140,000. In addition, the initial letter of complaint sent by Mr T's representatives says that the fraudsters pressured him into making his investments and told him that he could "double his money." I think Mr T should've been more sceptical about an investment opportunity that was promoted to him in that way, particularly given that the relationship between him and his broker was so informal, and nothing was written down.

Overall, I think it's fair and reasonable for Revolut to make a deduction of 50% from the redress payable to account for Mr T's contributory negligence.

Mr T responded to say that he accepted my provisional findings. Revolut didn't respond before the deadline. As neither party has provided any further evidence or arguments to challenge the outcome I reached in my provisional decision, I don't see any reason to depart from it. For that reason, I'm upholding Mr T's complaint for the same reasons set out in the

text above.

Final decision

I uphold this complaint.

If Mr T accepts my final decision, Revolut Ltd needs to refund 50% of the payments he made in connection with the scam. It also needs to add 8% simple interest per annum to those sums calculated to run from the date they left his account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 16 January 2025.

James Kimmitt
Ombudsman