

The complaint

Mr S complains that Revolut Ltd ('Revolut') won't refund the money he lost after falling victim to a scam.

What happened

In February 2023, Mr S saw an advertisement on a social media site for a cryptocurrency investment. Mr S clicked a link and provided his contact information, and was contacted by someone who said they worked for a company I'll refer to as L.

Mr S was told if he invested £10,000, he would triple it within six months. Mr S was initially cautious so only invested a small amount. But he says the balance in his account with L increased, so he decided to invest further. Ultimately, Mr S borrowed £15,000 in order to make the payments.

Below are the payments that Mr S made as part of the scam.

Date	Pmt no	Details of transaction	Amount
13.2.2023		Revolut account opened	
13.2.2023	1	Card payment to cryptocurrency exchange P	£480
23.3.2023	2	Card payment to cryptocurrency exchange M	£5,000
24.3.2023	3	Card payment to cryptocurrency exchange M	£5,000
28.4.2023	4	Card payment to cryptocurrency exchange M	£2,500
9.5.2023	5	Card payment to cryptocurrency exchange M	£5,000
9.5.2023	6	Card payment to cryptocurrency exchange P	£5,000
9.5.2023	7	Card payment to cryptocurrency exchange P	£5,050
		Total payments made as part of the scam	£28,030

Mr S became aware it was a scam when he tried to withdraw his funds and was told he had to make a payment for the same value to prove "source of funds".

Mr S, through a professional representative, raised a fraud claim with Revolut. Revolut declined Mr S's chargeback claim, saying Mr S had authorised the payments through 3DS. Revolut said Mr S received a push notification from his Revolut app and had to confirm each transaction.

Mr S wasn't happy with Revolut's response, so he brought a complaint to our service.

An investigator looked into Mr S's complaint and initially recommended that Revolut refund 50% of the last two payments. But, following submissions from Mr S's representative, the investigator revised his opinion. As a result, the investigator said Revolut should refund Mr S from payment two. The investigator felt Revolut should've been concerned when Mr S made the second payment of £5,000 and provided a tailored written warning relating to cryptocurrency investment scams. Had Revolut done so, the investigator felt the scam would've been uncovered and Mr S's loss prevented. However, the investigator felt Mr S should share responsibility for his loss, so reduced the refund by 50%.

Mr S disagreed that a deduction should be made, saying it was a sophisticated scam.

Revolut disagreed with the investigator's opinion, raising the following points:

- Revolut are bound by contract, applicable regulations and the common law to execute valid payment instructions. The duty is strict and is subject to only very limited exceptions.
- The Payment Service Regulations (PSR's) 2017 impose an obligation on Revolut to execute authorised transactions and promptly.
- Revolut recognises its obligations to put in place adequate procedures to counter the risk that it may be used to further financial crime, but that duty is not absolute and doesn't require Revolut to detect and prevent all fraud.
- Revolut are not required to assess the commercial wisdom or potential for financial loss of a proposed transaction, as recognised in the Supreme Court's judgement in Philipp v Barclays Bank UK plc UKSC25.
- It appears that the CRM Code or the mandatory reimbursement rules have been applied.
- Mr S didn't do due diligence before investing.
- Suggesting that Revolut should reimburse Mr S is irrational.
- We haven't considered possible intervention by other banks, as the Revolut payments were funded from the customer's own account with another bank.
- The loss didn't occur on Mr S's Revolut account, he should raise a complaint against the cryptocurrency wallet where the loss occurred.

Both parties asked for an ombudsman to review the case.

Having reviewed the case, I reached the same overall answer as the investigator, but with a different redress. So, I issued a provisional decision, giving both parties a chance to provide any further evidence they wanted considered before I issued a final decision.

My provisional decision

In my provisional decision I said:

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 S 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.

In practice Revolut did in some instances refuse or delay payments at the time where it suspected its customer might be at risk of falling victim to a scam.

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 February 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 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.

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 February 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)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 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.

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”

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

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

I appreciate that Mr S only opened his account in February 2023, so Revolut didn't have previous account activity to compare the scam payments to. However, by February 2023 Revolut ought to have recognised that cryptocurrency related transactions carried an elevated risk of the transaction being related to a fraud or scam.

As the first payment Mr S made was only £480, I'm not satisfied that Revolut should've had concerns about this payment. However, the second payment was for £5,000 and was clearly identifiable as going to a cryptocurrency exchange. So, I think Revolut should've identified a potential risk of financial harm.

What did Revolut do to warn Mr S and what kind of warning should Revolut have provided?

Revolut says Mr S wasn't shown any warnings.

When Mr S made the second payment, I think the appropriate action would've been for Revolut to provide Mr S with a written warning tailored to cryptocurrency investment scams.

This should've been an onscreen warning, as I don't consider it would've been appropriate for Revolut have provided human intervention at this point.

The written warning should have highlighted the main features of a cryptocurrency investment scam, which might include: the prevalence of advertisements online, often being endorsed by a celebrity, promising returns that are too good to be true, and asking consumers to download screen sharing software.

If Revolut had provided a warning of the type described, would that have prevented the losses Mr S suffered from payment two?

I think a tailored written warning explaining the key features of a cryptocurrency investment scams would've broken the spell and the scam would've been uncovered.

At the point of making payment two, Mr S had only made one prior payment which was quite small by comparison, so he wasn't heavily invested in the scam. Also, Mr S hadn't attempted to make any withdrawals from his investment. So, the key features would've resonated with Mr S as they mirror the way he found the investment, the high returns that he was promised, and that he was asked to download a screen sharing software.

Mr S couldn't afford to lose this money, and I think it's more likely than not any suggestion that he might be the victim of a scam would've prevented him from making any further payments. I'm not satisfied that I can fairly say Mr S would've ignored the warning and made the payments regardless.

It's worth noting that the bank where Mr S held his account that funded the Revolut payments, didn't intervene on any of the payments he made as they didn't identify a potential fraud risk.

Is it fair and reasonable for Revolut to be held responsible for Mr S's loss?

In reaching my decision about what is fair and reasonable, I have taken into account that the payments from Revolut were funded by transfers from Mr S's account with another bank. Also, that the Revolut payments were made to a cryptocurrency wallet held in Mr S's name that he had access to, before the funds were transferred to a wallet held by the scammer.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr S might have been at risk of financial harm from fraud when he made payment two, 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 Mr S 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 Mr S's own account does not alter that fact and I think Revolut can fairly be held responsible for Mr S'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 Mr S 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 Mr S could instead, or in addition, have sought to complain against those firms. But Mr S has 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 S's compensation in circumstances where: the Mr S has only complained about one respondent from which he is entitled to

recover his 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 S's loss from payment two (subject to a deduction for Mr S's own contribution which I will consider below).

Should Mr S bear any responsibility for his losses?

Mr S says he didn't receive any documentation in relation to the investment, and there is limited information about what he was told about the investment. But Mr S says he was told a £10,000 investment could triple within six months.

I think Mr S should've been concerned with this promised return, as it was too good to be true. Also, I can't see that Mr S did any research on L or the person he was communicating with, which I think a reasonable person would've done.

If Mr S had looked online, I think it's more likely than not he would've seen the warnings and articles that L weren't reliable along with suggestions that they were a scam.

On that basis, I think it's fair for Mr S to share responsibility for his loss and reduce the refund by 50%.

Recovery of funds

As the funds from Revolut went to a cryptocurrency wallet in Mr S's name, Revolut wouldn't be able to recover any funds and a chargeback wouldn't be successful. Any money left in Mr S's cryptocurrency wallet would've been available to him to withdraw.

Mr S has asked for his credit report to be amended in relation to the loan he took out to fund these payments. However, the loan wasn't provided by Revolut and any credit report entries in relation to the loan were made by the loan provider. So, I can't fairly make any award or recommendation in a complaint against Revolut in relation to Mr S's loan.

My provisional decision was that I upheld the complaint and intended to ask Revolut to refund 50% from payment two onwards and pay interest on the refund of 8% simple interest., calculated from the date of the payment until the date of settlement.

Responses to my provisional decision

Mr S accepted my provisional decision but asked that compensation be considered for the distress and harm caused by Revolut dragging out the investigation process, as they didn't accept our recommendations to uphold Mr S's case.

Revolut didn't respond to my provisional decision.

Under the Dispute Resolution Rules (found in the Financial Conduct Authority's Handbook), DISP 3.5.13, says, if a respondent (in this case Revolut) fails to comply with a time limit, the ombudsman may proceed with the consideration of the complaint.

As the deadline for responses to my provisional decision has expired, I'm going to proceed with issuing 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.

I appreciate that falling victim to a scam has a significant impact on the victim. Not just the financial impact of the loss of money, but also the distress caused and the acute impact that has on the victim's wellbeing. And I'm really sorry to hear about the impact that this had on Mr S.

As Mr S's representative will be aware, both parties to the complaint are entitled to disagree with the investigator's opinion or the ombudsman's provisional decision. In this case, Revolut didn't agree with either recommendation, which is their right as part of our process. It wouldn't be appropriate to make a compensation award on that basis. And, I haven't seen any evidence that Revolut unnecessarily prolonged Mr S's complaint, so I'm not satisfied that compensation is due.

As neither party has provided any new evidence for consideration, apart from Mr S's request for compensation, I see no reason to reach a different answer than I did in my provisional decision.

In summary

I'm not satisfied that Revolut should've identified a potential risk of financial harm when Mr S made his first payment. However, the second payment was for £5,000 and was identifiably related to cryptocurrency. So, I would've expected Revolut to have intervened on the second payment and provided an onscreen written warning setting out the key features of cryptocurrency investment scams.

If Revolut had provided this warning, I think it's more likely than not it would've resonated with Mr S and his loss could've been prevented. I say this as all the key features of a cryptocurrency investment scam warning mirrored the circumstances under which Mr S found the investment.

But, I also think it's fair for Mr S to share responsibility for his loss with Revolut, as he should've been concerned with the return he was promised and the lack of documentation. Any checks online would've uncovered that the investment was a scam.

Putting things right

To put things right I require Revolut Ltd to:

- Refund 50% from payment two onwards, being £13,775
- Pay simple interest of 8% per year on the refund, calculated from the date of the payments until 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 Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold this complaint against Revolut Ltd and require them to compensate Mr S, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 16 January 2025.

Lisa Lowe
Ombudsman