

## The complaint

Mrs H complains that Revolut Ltd won't refund the money she lost when she was the victim of a scam.

## What happened

In January 2023, Mrs H saw an advert online featuring a well-known public figure advertising investing in cryptocurrency. She followed a link in the advert, filled out her details and was contacted by someone who said they worked for a cryptocurrency investment company.

Mrs H was told to open an account with a cryptocurrency exchange, and shown how to purchase cryptocurrency and then send it to the investment company. And Mrs H then made a number of payments from her Revolut account to purchase cryptocurrency, which she then sent on to wallet details she was given for the company.

I've set out the payments Mrs H made from her Revolut account below:

Date	Amount
6 February 2023	£5,000
16 February 2023	£4,500
6 March 2023	£2,500

Unfortunately, we now know the cryptocurrency investment company was a scam. The scam was uncovered after Mrs H was told she needed to pay more money in before she could withdraw the profit she was told she had made. She spoke to her husband, who said it sounded like a scam, and Mrs H then reported the payments she had made to Revolut.

Revolut investigated but said Mrs H had authorised all the payments, it couldn't find any traces of fraudulent activity on her account and it didn't think it had missed the chance to prevent any of the payments. So it didn't agree to refund any of the money she had lost. Mrs H wasn't satisfied with Revolut's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought Revolut should have been concerned when Mrs H made the first payment here, and so intervened and shown her a warning about cryptocurrency investment scams. And they thought this would likely have stopped Mrs H making the payments. So they thought Revolut should refund the money Mrs H lost, in full. Revolut disagreed with our investigator, so the complaint has been passed to me.

## 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.

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 H 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 from 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<sup>1</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.

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>2</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”.
- 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>3</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

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<sup>1</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>2</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.

<sup>3</sup> BSI: PAS 17271: 2017 “Protecting customers from financial harm as result of fraud or financial abuse”

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.
- 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.

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 from 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 from February 2023, Revolut should in any event have taken these steps.

Should Revolut have recognised that Mrs H was at risk of financial harm from fraud?

I'm satisfied Revolut ought to have recognised that Mrs H was at heightened risk of financial harm from fraud when she tried to make the first payment here, for £5,000 on 6 February 2023.

I appreciate that Mrs H had only opened the account a few weeks earlier, and so there was limited information available for Revolut to consider about the usual activity on her account. But this first payment was for what I consider to be a significant amount. And it was immediately preceded by a credit into her account for the exact same amount, and it then used up almost the full balance of her account – which matches a pattern of activity often seen when customers are falling victim to a scam.

The payment was also identifiably related to cryptocurrency which, around this time, I think Revolut should have recognised meant it carried an elevated risk of being related to a fraud or scam.

And so I think Revolut should have recognised that Mrs H was at risk of financial harm from fraud here.

To be clear, I do not suggest that in February and March 2023 every payment used to purchase cryptocurrency presented such a heightened risk of fraud that Revolut should have warned its customer before processing them. Instead, as I've explained, I think it was a combination of the characteristics of this payment and the circumstances in which the payment was made to a payment service provider that, at the relevant time, was acting as a payment processor for a cryptocurrency provider, that ought to have given Revolut sufficient cause for concern that Mrs H could be at risk of suffering financial harm from fraud when she attempted to make the payment on 6 February 2023. In those circumstances, it should fairly and reasonably have taken additional, proportionate, steps before completing the payment.

What did Revolut do to warn Mrs H?

Revolut hasn't suggested that it showed Mrs H any kind of warning, or took any other steps to make her aware of the risks of scams, at the time she made these payments.

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 duty to make payments promptly, as well as what I consider to have been good industry practice at the time this payment was made.

Taking that into account, I think Revolut ought, when Mrs H attempted to make the 6 February 2023 payment, knowing that the payment was going to a cryptocurrency provider, to have provided a warning (whether automated or in some other form) that was specifically about the risk of cryptocurrency scams, given how prevalent they had become by the end of 2022. In doing so, I recognise that it would be difficult for such a warning to cover off every permutation and variation of cryptocurrency scam, without significantly losing impact.

So, at this point in time, I think that such a warning should have addressed the key risks and features of the most common cryptocurrency scams – cryptocurrency investment scams. The warning Revolut ought fairly and reasonably to have provided should have highlighted, in clear and understandable terms, the key features of common cryptocurrency investment

scams, for example referring to: an advertisement on social media, promoted by a celebrity or public figure; an 'account manager', 'broker' or 'trader' acting on their behalf; the use of remote access software and a small initial deposit which quickly increases in value.

I recognise that a warning of that kind could not have covered off all scenarios. But I think it would have been a proportionate way for Revolut to minimise the risk of financial harm to Mrs H by covering the key features of scams affecting many customers but not imposing a level of friction disproportionate to the risk the payment presented.

*If Revolut had provided a cryptocurrency investment scam warning, would that have prevented the losses Mrs H incurred after that point?*

I've thought carefully about whether a specific warning covering off the key features of cryptocurrency investment scams would have likely prevented any further loss in this case. And on the balance of probabilities, I think it would have. There were several key hallmarks of common cryptocurrency investment scams present in the circumstances of Mrs H's payments, such as finding the investment through an advertisement endorsed by a public figure, being assisted by a broker and being asked to download remote access software so they could help her open cryptocurrency wallets.

I've seen evidence of Mrs H's interactions with another bank she was sending money from as part of this scam, and with the bank the funds used for the scam appear to have originated from. She answered the questions these banks asked about the payments openly and honestly, including that the payments were for a cryptocurrency investment she had seen advertised by a public figure, and doesn't appear to have been trying to hide any information about the circumstances of the payments.

I've seen no indication that Mrs H expressed mistrust of Revolut or financial firms in general. And I've not seen any evidence that the scammer told her to mislead any bank that contacted her about the payments, to conceal the true purpose of the payments or to ignore any warnings she was given.

Neither of the other banks Mrs H spoke to showed her a written warning about cryptocurrency scams or explained the common features of such scams to her. So I've not seen anything to suggest Mrs H would have ignored or moved past any warning she was given.

I've taken into account that Mrs H had received modest actual returns at the point of suggested intervention, but the weight of evidence that I've outlined persuades me that Mrs H was not so taken in by the fraudsters that she wouldn't have listened to the advice of Revolut.

Therefore, on the balance of probabilities, had Revolut provided Mrs H with an impactful warning that gave details about cryptocurrency investment scams and how she could protect herself from the risk of fraud, I believe it would have resonated with her. She could have paused and looked more closely into the investment company before proceeding, made further enquiries into cryptocurrency scams and whether or not the broker she was speaking to was regulated in the UK or abroad, and discussed what was happening with family and friends – which is what ultimately appears to have uncovered the scam. I'm satisfied that a timely warning to Mrs H from Revolut would very likely have caused her to take similar steps – revealing the scam and preventing her further losses.

*Is it fair and reasonable for Revolut to be held responsible for some of Mrs H's loss?*

In reaching my decision about what is fair and reasonable, I have taken into account that Mrs H paid money using her Revolut account to another account in her own name with a cryptocurrency exchange, rather than directly to the fraudster. So she remained in control of her money after she made the payments, and there were further steps before the money was lost to the scammer.

But as I've set out in detail above, I think that Revolut still should have recognised that Mrs H might have been at risk of financial harm from fraud when she made the payment on 6 February 2023, and in those circumstances it should have provided her with a warning about the risk of cryptocurrency scams. If it had taken those steps, I am satisfied it would

have prevented the losses Mrs H 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 H's own account does not alter that fact and I think Revolut can fairly be held responsible for Mrs H'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 H 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 H could instead, or in addition, have sought to complain against those firms. But Mrs H 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 a consumer'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 H's loss from the payment of 6 February 2023 onwards (subject to a deduction for consumer's own contribution which I will consider below).

#### *Should Mrs H bear any responsibility for her losses?*

Revolut has argued that Mrs H should have done more to protect herself here by doing a greater level of due diligence on the cryptocurrency investment company before making the payments. And I've considered whether it would be fair for Mrs H to bear some 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.

Mrs H first found out about the cryptocurrency investment company from an advert that appeared on her screen while she was reading an established online national newspaper, and which appeared to be endorsed by a well-known public figure. And I think it's reasonable that both of these things will have made Mrs H think the advert was legitimate.

This appears to have been a very sophisticated scam. The company had a website which appears to have looked relatively professional. Mrs H was assigned a personal broker who guided her through the process of buying cryptocurrency and making trades, and who she was in frequent contact with. And the company had a trading platform, which showed trades being made and the profits and losses customers were making.

Mrs H also appears to have tried to research the company to check whether it was legitimate. She says she checked that the company was registered on the government's register of limited companies – where there was a company listed matching the name she was given for the cryptocurrency investment company. And she says she checked an online reviews website which, at the time, showed a number of positive reviews for the company and no suggestion that it was a scam. So I think it's reasonable that these checks will have reassured Mrs H that the company was legitimate. And, as she wasn't an experienced



investor, I don't think it's unreasonable that Mrs H didn't carry out any further checks beyond these before going ahead and making the payments.

After the initial payment she made, the cryptocurrency investment company also allowed Mrs H to make two modest withdrawals, likely to encourage her to invest further. But I think it's reasonable that being able to withdraw in this way would've reassured Mrs H that the company was legitimate.

I appreciate that, with the benefit of hindsight, it's possible to identify a number of things about what was happening that could have caused Mrs H some concern – such as being asked to give her broker remote access to her device. But, based on what I've seen, I don't think it was unreasonable that, at the time, she either didn't pick up on these things or wasn't caused enough concern by them to overcome the parts of the scam that felt genuine.

So I don't think it would be fair to say that Mrs H acted unreasonably when making the payments here, or that she should bear some responsibility for her loss.

#### *Did Revolut provide Mrs H with a reasonable standard of customer service?*

From what I've seen of Revolut's correspondence with Mrs H when she reported the scam and during her claim, I don't think Revolut provided her with a reasonable standard of customer service. There are a number of occasions where Revolut either doesn't respond for a significant period of time, doesn't appear to correctly understand what Mrs H is asking or gives unclear or unhelpful information in response to her. And I think this poor customer service caused Mrs H distress and inconvenience.

Based on the circumstances of this case, I think a payment of £125 would be fair and reasonable compensation for the impact this poor customer service had on Mrs H. And so I think Revolut should make this payment to her, in addition to the refund of the payments she made as a result of the scam.

#### *Summary*

For the reasons set out above, I think Revolut should have identified that Mrs H was at risk of financial harm from fraud as a result of the payments she made here. And I think the warning I would have expected it to show in response to this risk would have prevented Mrs H making the payments, and so losing the money she did. I also don't think it would be fair for Mrs H to bear any responsibility for the money she lost. So I think Revolut should now refund the money Mrs H lost as a result of this scam.

As Mrs H received returns of £99.88 and £173.90 from the cryptocurrency investment company, I think it would be fair for these amounts to be deducted from the amount Revolut should refund.

#### **My final decision**

I uphold this complaint and require Revolut Ltd to:

- Refund Mrs H the £12,000 payments she made as a result of this scam, less the returns of £99.88 and £173.90 she received – for a total refund of £11,726.22
- Pay Mrs H 8% simple interest on this refund, from the date of the payments until the date of settlement
- Pay Mrs H £125 compensation

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 28 February 2025.

Alan Millward  
**Ombudsman**