

The complaint

Mrs P complains that Revolut Ltd (“Revolut”) didn’t do enough to protect her when she fell victim to a scam.

What happened

The details of this complaint are well known to both parties, so I won’t repeat them again in full here. Instead, I’ll summarise what happened and focus on giving the reasons for my provisional decision.

Between January 2022 and May 2022, Mrs P sent around £70,000 (made up of pounds and euros) towards what she believed to have been an investment. She’d been contacted about the investment by email and said she’d made an initial investment of £250, which had been returned to her along with £70 profit.

Mrs P said she realised she’d been scammed when she tried to withdraw funds from her investment and was asked to pay withdrawal fees. Realising she’d been the victim of a scam, she complained to Revolut. It initially tried to obtain further information from her but didn’t receive a response. So, it didn’t uphold her complaint based on the information it had available.

Mrs P then raised a complaint with our Service, via a representative. Our investigator upheld the complaint in part. She felt that Revolut ought to have been concerned at the point of the first payment – which was for £30,000 – which she thought was high enough to have warranted further intervention. She didn’t think the written warnings provided were sufficient. And she thought that, had it appropriately intervened, the scam could have been unravelled.

But, our investigator also felt that Mrs P had contributed to the loss. And, on that basis, she felt that she should be held equally responsible, by way of a 50% deduction for contributory negligence.

Mrs P agreed but Revolut didn’t. It felt it had given extensive warnings and that Mrs P had shown a lack of care.

So, the complaint was passed to me. I got in touch with Revolut, in an effort to resolve this case informally, as our rules allow. I said I’d seen a payment made prior to the scam (of £30,000) which had been ‘reverted’ for which Mrs P had selected ‘safe account’ as her payment purpose. And that the next payment, also for £30,000 had then been processed. While Mrs P hadn’t been the victim of a safe account scam, I felt that Revolut had been put on notice that she was at risk of financial harm. Especially given the ongoing in-app chat around this time, I was minded to say that Revolut had sufficient opportunity to query the payments she was making.

Had it done so, I was inclined to think that the use of AnyDesk would have quickly been uncovered and the scam would have unravelled from here. And, for that reason, I felt that Revolut should be held responsible for 50% of the losses, plus interest. Despite providing a deadline and an extension, I didn’t hear back from Revolut. So I issued a provisional

decision.

In this, I said:

“In deciding what’s fair and reasonable, I’m 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, I understand that the terms of Revolut’s contract with Mrs P, which I’ve not been provided with, will have 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”. If this isn’t the case, I’d expect Revolut to provide me with a copy of the relevant terms and condition.

So Revolut was required by the implied terms of its contract with Mrs P and the Payment Services Regulations to carry out their 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

¹ 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).

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 January 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;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 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.*

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.

- *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).*
- *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 January 2022 that Revolut should:

- *have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;*
- *have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;*
- *in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – (as in practice Revolut sometimes does); and*
- *have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.*

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

Mrs P had recently opened her account with Revolut. The first payment she makes is for the substantial amount of £30,000 and, when prompted, says she's moving the money to a safe account. While this wasn't the scam she'd fallen victim to, Revolut wouldn't have known this. And, though this payment was ultimately returned to her account, I think the payment purpose alone should have alerted them to the potential that Mrs P was at risk of financial harm.

Mrs P then makes a payment of £30,000 not long after, which did process as expected and was the first payment lost to the scam. Again, given the substantial amount, this should have

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

warranted an intervention. Further payments were made, for over £15,000 at a time to a cryptocurrency exchange on two occasions.

I note there was regular communication between Mrs P and Revolut on its in-app chat where some of the messages she sent should have been cause for concern:

- *On 5 April 2022, Mrs P let Revolut know she was expecting a payment of £300,000 into her account from a cryptocurrency exchange. She states the following day that this is the first time she's transferred such a large amount. And a few days later, Revolut said it hadn't received the payment in its system.*
- *Also on 5 April, Mrs P said "I put all my savings into a company who invested it for me on the stock market. I am prepared to pay tax on it and I have an accountant... I am relying on that money to be able to live."*
- *On 15 April, Revolut said "it seems that transaction was declined by the card issuer due to potential fraudulent payment. Could you check that from their side?" to which Mrs P didn't respond. Revolut processed a payment of £3,064 later that day, to a cryptocurrency exchange, despite not receiving a response from Mrs P.*

From these messages, it's clear Mrs P has risked all of her money investing. And that Revolut has at least some concerns which it seemingly doesn't act upon. When discussing the incoming funds from the cryptocurrency exchange, it starts to look concerning that Mrs P thinks £300,000 has been transferred to her account which Revolut has no record of. And this should have been concerning to Revolut, at least to the extent it should have probed further.

What did Revolut do to warn Mrs P and what should it have done?

In response to Mrs P selecting 'Transfer to a 'Safe Account'', Revolut provided a warning which warned her that there was a high probability the payment was a scam. It provided things to look out for, such as how Revolut or other banks would never tell her to move her money into a safe account.

In response to her selecting 'Investment', it also let her know there was a high probability this was a scam and asked her to verify this was a genuine investment company and made her aware that scammers typically promise significantly higher than market returns to attract people to the opportunity.

I note that it also did checks on the source of funds, but I don't think this addressed the relevant concerns – it prompted her to provide things like her pay slips. And, having read the in-app chat, I can see that Revolut doesn't ask about Mrs P much at all about the purpose of the payments.

But given the amounts being transferred, the content of the in-app messages mentioned above, and the fact Mrs P initially selected 'safe account', I don't think these warnings were sufficient.

Revolut shouldn't have allowed the first payment through (though it was ultimately returned) unless it had been able to completely satisfy itself that the payment reason was selected in error. I can't see that it made attempts to do this. Based on this, another payment of £30,000 a short time later should have been particularly concerning. But it also would have been concerning on the amount alone and I would have expected a human intervention.

I would also have expected interventions prior to processing the next two payments, which were for in excess of £15,000 and were being made to cryptocurrency. Following this was

the abovementioned payment for over £3,000, despite Revolut having already identified a concern on that same day.

So, I would have expected a human intervention on more than one occasion.

If Revolut had provided a warning of the type described, would that have prevented the losses Mrs P suffered?

Had Revolut intervened as outlined above, I think the scam would have immediately unravelled. Mrs P told us that the scammer used AnyDesk to open the account with Revolut. If Revolut had asked suitably probing questions, I think it would have uncovered this – I can't see a legitimate reason why this would have been used.

I haven't seen anything to suggest that Mrs P was advised to mislead Revolut – so, believing this to be a genuine investment, I also can't see why she would have provided inaccurate answers. She admitted that she made a mistake with the first payment she made, hence why it was being returned to her. And I think it's safe to assume that the scammer wouldn't have directed her to select 'safe account', as this would have been more likely than the other options to prompt an intervention from Revolut. We can see that she selected 'investment' from then on which was accurate.

Looking at the in-app chat, Mrs P appears to be quite open about her concerns and with her questions. So it doesn't appear that she's trying to conceal anything from Revolut.

After Mrs P believed she was going to be receiving £300,000 and there was no sign of this, Revolut had further opportunity to intervene here. And, believing that she was going to be receiving a large sum of money that there was no sign of, I think she would have been quite receptive to proportionate probing from Revolut.

So, there were several opportunities to intervene. And I'm minded to say that Mrs P would have taken heed of the appropriate warning at the first payment, as well as at later points.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Revolut was the 'middle man' with regards to the payment journey. Mrs P had moved money from other accounts to Revolut before sending on to cryptocurrency exchange services or similar.

But as I've set out above, I think that Revolut still should have recognised that Mrs P might have been at risk of financial harm from fraud when she made her first 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 P 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 P's own account does not alter that fact and I think Revolut can fairly be held responsible for her 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 P 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 P could instead, or in addition, have sought to complain against those firms. But she's not chosen to do that and ultimately, I cannot compel them to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mrs P's compensation in circumstances where: the consumer has only complained about one respondent from which she is entitled to recover her 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 P's loss from the first payment (subject to a deduction for her own contribution which I will consider below).

Should Mrs P bear any responsibility for their losses?

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.

Having done so, I'm satisfied it would be fair for Mrs P to share responsibility for her loss with Revolut.

I say this because Mrs P seems to have been cold contacted about this opportunity by email. While there's been mention of her friend having invested too, I don't think that provides enough of a safety net to warrant investing such large sums on the back of a one-off profitable transaction where she received £70 from her £250 investment.

I've not seen any evidence about the expected returns, the nature of the investment, or the risks involved. And it doesn't appear Mrs P conducted sufficient due diligence.

I also note that, having expected to receive £300,000 which didn't materialise, Mrs P made further payments. It's likely the scammer provided context around this to keep her on side, but I think this should have rung alarm bells. Together with the initial profit of £70, the returns Mrs P believed she'd be receiving, particularly given the length of time she'd been investing, were far too good to be true.

Overall, I think there were enough red flags that Mrs P should have been concerned about the legitimacy of the investment, and therefore should share liability for her loss with Revolut.

In summary, I think Revolut should've intervened by way of a proportionate human intervention when Mrs P made her first payment and, if it had, her loss could've been prevented. However, I think it's fair for Mrs P to share the responsibility for her loss with Revolut and therefore only ask Revolut to refund 50%.

I should add that I note some of the money paid towards the scam was funded by a family member. Having queried this, I'm satisfied that Mrs P was only borrowing this money and it forms part of her loss."

I said that I intended to ask Revolut to refund 50% of the payments Mrs P made, factoring in any amounts recovered and to pay simple interest of 8% per year on this amount from the date of the payments until the date of settlement.

Mrs P responded to accept my provisional decision. Revolut didn't respond.

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.

Having done so, given that neither party has provided any further evidence for consideration or any objections to my provisional decision, I see no reason to depart from my provisional findings.

Putting things right

To put things right for Mrs P, Revolut Ltd should:

- Refund 50% of the payments Mrs P made, factoring in any amounts recovered
- Pay simple interest of 8% per year on this amount, calculated from the date of the payments until the date of settlement.

My final decision

My final decision is that I uphold this complaint against Revolut Ltd and direct it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 5 February 2025.

Melanie Roberts
Ombudsman