

The complaint

Mr S complains Revolut Ltd didn't do enough to protect him when he fell victim to an investment scam.

What happened

The details of this complaint are well known to both parties, so I will not repeat them again here in detail. The facts are not in dispute so I will focus on giving the reasons for my decision.

Mr S saw an investment opportunity through an advert on a popular video streaming website. He completed his details and was contacted by a firm about investing in cryptocurrency, stocks and shares.

Mr S initially invested a small sum on his credit card and saw a few days later he'd made nearly 50% on this back already. He was then asked to invest £20,000 which he was told would double in six months. Mr S paid the details he was given, which were actually for an international gold merchant. Mr S made seven payments to the scam, two on 14 March 2023, one on 16 March 2023 and four on 24 March 2023. Mr S discovered he was scammed after he was put under a lot of pressure and couldn't withdraw his funds, so he looked online and found negative reviews.

Mr S complained to Revolut, but it didn't uphold his complaint. It was able to recover the payments he sent on 24 March 2023 via a chargeback claim, but not others. It said it hadn't done anything wrong in relation to these, so Mr S came to our service. Our investigator partially upheld Mr S's complaint, Revolut disagreed and asked for a decision.

I issued a provisional decision on this case in December 2024. My provisional findings were as follows:

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 March 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.*

For example, it is my understanding that in March 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 Code*³*, 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*

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/

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”

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).

- 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 March 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 March 2023, Revolut should in any event have taken these steps.

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

Mr S made two card payments in under ten minutes totalling over £8,000 to a gold merchant, identifiable from the information Revolut held. He'd had the account open for a month and told Revolut he was opening it to "spend or save daily". So these transactions were not in-line with what he said he'd use the account for. The account had also sat empty until a few days before this payment, so I consider Revolut should've had concerns Mr S was at risk of financial harm. Two high value payments

left the account quickly; for gold – not in line with the proposed account usage, on a previously empty account.

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, in line with what I consider to have been good industry practice at the time, as well as what I consider to be fair and reasonable, when Mr S attempted to make the second payment on 14 March 2023, to have asked about the purpose of the payment (for example by asking Mr S to select a payment reason from a list of possible reasons) and provided a warning which covered the key scam features of the payment purpose selected.

In March 2023, I think that one of the payment purposes that Mr S could have selected should have covered the key features of cryptocurrency investment scams, given how common they were at the time. I've seen nothing to indicate Mr S would have not selected the most relevant payment purpose had he been asked. While he was actually paying a gold merchant, he understood he was paying funds to invest in forex and cryptocurrency – so I consider he'd have picked this option.

The warning Revolut ought 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 the features of these kind of investment scams. But I think a warning covering the key features of scams affecting many customers, but not imposing a level of friction disproportionate to the risk the payment presented, would have been a proportionate and reasonable way for Revolut to have acted in March 2023 to minimise the risk of financial harm to Mr S.

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

I consider Mr S would've seen the warning closely mirrored his situation and not attempted to remake the payment. The circumstances of Mr S's case had many features that are common to this type of scam. Mr S had seen an advert online, on a popular video streaming platform for the investment company; he'd been given access to a trading platform and a broker; and had made an initial deposit which appeared to be growing significantly in value. He was also using screen sharing software and expecting to receive quick returns far exceeding the investment he was making.

Importantly, I think, Mr S was also part way through making a much larger payment – one that would turn a modest investment (and potential loss) into something much more significant. I think he's likely to have been more receptive to a warning at a point where he had less to lose by stopping. In addition, Mr S did not receive any specific warnings from Revolut, so there's no evidence he ignored a specific and

tailored warning at any stage. So had Revolut intervened, it could've prevented the second payment on 14 March 2023 and the payment on 16 March 2023.

Should consumer bear any responsibility for their losses?

Mr S discovered he'd been scammed by doing the level of research I'd have expected of him before he started sending large amounts to this scam. There were negative reviews published describing the situation he later found himself in and the reviews were available some time before he began investing.

Mr S was paying a gold merchant without any understanding of why – and we're aware his correct email was used for the gold receipts, so he should've been aware of this. But Mr S didn't question this at the time. He also didn't question the unrealistic returns he was being promised. All of this combined means I'm satisfied he should also be held responsible for his losses here.

Mr M responded to the provisional decision and explained that he didn't find the negative scam reviews himself. He said his daughter found them when she was suspicious about what was going on, as he wasn't aware he could check for reviews of firms in this way. Revolut didn't respond to the provisional decision. As the deadline passed some time ago, the case has been returned to me to review.

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 have thought about the additional comments Mr S has provided, but they don't change my provisional findings, as outlined above. I'll explain why.

While Mr S has said he wasn't aware he could look for negative reviews online, he was choosing to invest in cryptocurrency and found the opportunity through an online streaming service. So he was confident enough with using the internet to find the opportunity and also to choose to invest in a digital, computer-based currency. I find it unusual that someone doing this wouldn't realise you could use an internet search engine to look for reviews. But even if I was to accept he didn't realise this, I can't say it's fair to hold Revolut entirely responsible for the loss, because I consider doing the research I've outlined a basic and reasonable step that Mr S ought to have taken before investing.

In the same respect, I also highlighted my concerns around him purchasing gold despite this not aligning with what he understood he was doing. And the fact the returns promised were unrealistic. So at the time he did hold concerning information, even without knowing how to or doing research, and yet he still went ahead. I'm therefore still satisfied he should be held jointly liable for the loss and my provisional findings were fair in the circumstances of this case.

As Revolut didn't respond and Mr S didn't provide additional comments outside of the above, I don't see any reason to change my provisional findings. I'm partially upholding his case as I consider Revolut ought to have intervened on the second payment Mr S made on 14 March 2023 and had it done so it could've unravelled the scam at this time. But Mr S should be held jointly liable for the loss, for the reasons explained, so Revolut can reduce what it pays him by 50%.

Putting things right

While Mr S did receive a small return initially, this was from his original deposit made from another account. As this small credit didn't involve funds sent on his Revolut account and was still less than the original amount sent, I don't consider this should be deducted from the funds sent from Revolut.

Mr S has however been able to contact the merchant he bought the gold from and discovered he has an equivalent of £15 worth of gold remaining in his account. As Mr S wouldn't have this gold had it not been for the scam and he can sell it and take the funds, this should be accounted for in the redress.

So I direct Revolut Ltd to:

- Refund Mr S the second payment he made on 14 March 2023 and the payment he made on 16 March 2023. It should reduce the 16 March 2023 payment by £15 to account for the gold Mr S still owns. It should then reduce this whole refund by 50% to account for Mr S's contributory negligence.
- Award 8% simple interest on this refund from the dates of loss to the date of settlement.

My final decision

For the reasons set out above, I partially uphold Mr S's complaint against Revolut Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 10 February 2025.

Amy Osborne
Ombudsman