

The complaint

Mr C complains that Revolut Ltd ('Revolut') won't refund the money he says was lost as the result of a scam.

What happened

In July 2023, Mr C was looking online and found an investment opportunity on a social media site. I'll refer to the company offering the investment opportunity as B. This was an investment scam and the scammers had cloned a genuine company.

Mr C clicked on the link in the advert and provided his contact information. He was then called by someone who said they worked for B. Mr C was told the investment involved trading in forex exchange, commodities and cryptocurrency. A small percentage of his profit would be taken as commission, and he could expect a minimum return of 300%.

As part of the process, Mr C was helped to open an account in his name with a cryptocurrency exchange, as well as a trading account with B.

Mr C made the following payments from his Revolut account to his cryptocurrency account, then onto the scammer.

Date	Time	Details of transaction	Amount
17.7.2023	19:54	Transfer to C – a genuine cryptocurrency exchange	£10
17.7.2023	20:07	Transfer to C – a genuine cryptocurrency exchange	£150
17.7.2023	21:24	Transfer to C – a genuine cryptocurrency exchange	£8,711

Mr C says he watched trades being placed on his behalf and his balance with B grow. At the end of July 2023, Mr C wanted to make a withdrawal from his trading account but was told he had to invest more money first. Mr C realised it was a scam.

Mr C reported the scam to Revolut and asked that they refund him. Revolut declined to refund Mr C, saying Mr C was shown a new payee warning and they weren't at fault for processing the transfers he authorised. Revolut had contacted the beneficiary bank but was unable to recover Mr C's funds.

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

An investigator looked into Mr C's complaint and partially upheld it. The investigator felt Revolut should've intervened when Mr C made the last payment, as it was out of character for his account and was identifiably related to cryptocurrency. The investigator was satisfied that if Revolut had intervened, the scam would've been uncovered and the loss on the last payment would've been prevented. However, the investigator felt it was fair for Mr C to share responsibility for the loss on the last payment. The investigator said Mr C should've been concerned with what he was told and had he done basic checks on B, he would've realised it was a scam.

Mr C accepted the investigator's opinion, but Revolut didn't. Revolut raised the following points:

- Mr C owned and controlled the beneficiary account therefore the loss didn't occur on his Revolut account.
- The type of payments Mr C was making weren't out of character with the typical way an Electronic Money Institute (EMI) account is used.
- Our reliance on R (on the application of Portal Financial Services LLP) v FOS is misconceived and amounts to a legal error.
- We should be considering possible other bank intervention including warnings, as the funds that originated with Revolut came from Mr C's own external account.
- We should exercise our power to inform Mr C that it could be appropriate to make a complaint against another respondent, if necessary

As the case couldn't be resolved informally, it was passed to me for review.

What I've decided – and why

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In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that an Electronic Money Institution ("EMI") such as Revolut is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account.

And, as the Supreme Court has recently reiterated in *Philipp v Barclays Bank UK PLC*, subject to some limited exceptions banks have a contractual duty to make payments in compliance with the customer's instructions.

In that case, the Supreme Court considered the nature and extent of the contractual duties owed by banks to their customers when making payments. Among other things, it said, in summary:

- The starting position is that it is an implied term of any current account contract that, where a customer has authorised and instructed a bank to make a payment, it must carry out the instruction promptly. It is not for the bank to concern itself with the wisdom or risk of its customer's payment decisions.
- At paragraph 114 of the judgment the court noted that express terms of the current account contract may modify or alter that position. In *Philipp*, the contract permitted Barclays not to follow its consumer's instructions where it reasonably believed the payment instruction was the result of APP fraud; 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 C modified the starting position described in *Philipp*, by expressly requiring Revolut to refuse or delay a payment *"if legal or regulatory requirements prevent us from making the payment or mean that we need to carry out further checks"*.

So Revolut was required by the implied terms of its contract with Mr C 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 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 July 2023 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).
- Over the years, the FCA, and its predecessor the FSA, have published a series of

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).

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/>

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.

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 July 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.
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Should Revolut have recognised that Mr C was at risk of financial harm from fraud?

By July 2023, when these transactions took place, Revolut should have been aware of the risk of multi-stage scams involving cryptocurrency for some time. Scams involving cryptocurrency have increased over time and by July 2023, when these payments took place, Revolut should've been aware of the increased risk of financial harm associated with payments involving cryptocurrency.

I recognise that many customers who wish to purchase cryptocurrency for legitimate purposes will be more likely to use the services of an EMI, such as Revolut. And I'm also mindful that a significant majority of cryptocurrency purchases made using a Revolut account will be legitimate and not related to any kind of fraud.

But, our service has also seen numerous examples of consumers being directed by fraudsters to use Revolut accounts in order to facilitate the movement of the victim's money from their high street bank account to a cryptocurrency provider, a fact that Revolut is aware of.

So, taking into account all of the above I am satisfied that by the end of 2022, prior to the payments Mr C made in July 2023, Revolut ought fairly and reasonably to have recognised that its customers could be at an increased risk of fraud when using its services to purchase cryptocurrency, notwithstanding that the payment would often be made to a cryptocurrency wallet in the consumer's own name.

I'm not satisfied that Revolut should've been concerned about the first two payments, based on the size of the payments and Mr C having previously made payments to the same cryptocurrency exchange.

However, the third payment was for significantly more and was unusual and out of character compared to the previous activity on his account. Also, it was the third payment, identifiably related to cryptocurrency, that has been made in quick succession. So, I'm satisfied Revolut should've identified a potential risk of financial harm on the last payment Mr C made.

What did Revolut do to warn Mr C?

Revolut say Mr C was shown a new payee warning when he made the first payment. This warning said:

Do you know and trust this payee?

If you're unsure, don't pay them, as we may not be able to help you get your money back.

Revolut say Mr C wasn't shown any other warnings at the time he made these three payments. However, Revolut say they frequently inform customers about scams and provide prevention tips through emails and blog posts on their website.

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 also given due consideration to Revolut's primary duty to make payments promptly.

I'm mindful that firms like Revolut have had warnings in place for some time. It, along with

other firms, have developed those warnings to recognise both the importance of identifying the specific scam risk in a payment journey and of ensuring that consumers interact with the warning.

In light of the above, I think that by July 2023, when these payments took place, Revolut should have had systems in place to identify, as far as possible, the actual scam that might be taking place and to provide tailored, effective warnings relevant to that scam for both APP and card payments. I understand in relation to Faster Payments it already had systems in place that enabled it to provide warnings in a manner that is very similar to the process I've described.

I accept that any such system relies on the accuracy of any information provided by the customer and cannot reasonably cover off every circumstance. But I consider that by July 2023, on identifying a heightened scam risk, a firm such as Revolut should have taken reasonable steps to attempt to identify the specific scam risk – for example by seeking further information about the nature of the payment to enable it to provide more tailored warnings.

In this case, Revolut knew that the last payment was being made to a cryptocurrency provider and its systems ought to have factored that information into the warning it gave. Taking that into account, I am satisfied that, Revolut ought to have attempted to narrow down the potential risk further.

In this case, Mr C was falling victim to a 'investment scam'. As such, I'd have expected Revolut to have asked a series of simple questions in order to establish that this was the risk the payment presented. Once that risk had been established, it should have provided a warning which was tailored to that risk and the answers Mr C gave.

I'd expect this warning to have covered off the key features of such a scam, such as being offered returns that were too good to be true, returns being guaranteed (as forex trading involves risk so a genuine firm wouldn't guarantee a return), being asked to increase investment over a short period of time and being unable to withdraw funds. I realise that any such warning relies on the customer answering questions honestly and openly, but I haven't seen anything to indicate that Mr C wouldn't have done so here. We have a copy of the messages between Mr C and the scammer and there is no indication that Mr C discussed the payments with the scammer or was coached in what to say if any of the payments warranted intervention.

If Revolut had provided a warning of the type described, would that have prevented the loss Mr C suffered on the last payment?

From what I've seen Mr C was investing his life savings and this wasn't money he could afford to gamble with. So, I think if Revolut had given Mr C the type of warning I've set out above, that Mr C would've been concerned and wouldn't have continued with making the last payment.

I haven't seen anything to suggest that Mr C knew that these types of scams existed, or what to look out for and wouldn't have taken the warning seriously. As I mentioned above, I can't see that Mr C discussed the payments with the scammer or there was any coaching on what to say if any of the payments triggered intervention. So, I think it's more likely that not Mr C would've heeded the warning from Revolut.

It's worth noting that we contacted the bank Mr C used to fund his Revolut account. That bank was unable to tell us if they had provided a warning or intervened when Mr C made his payment. I realise that Revolut feel intervention by the other bank should be taken into

account, but in this case where there is no evidence of intervention, I can't fairly say that means Revolut couldn't have prevented his loss.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Revolut was an intermediary in this transaction. Mr C transferred funds from an account he held with another bank to his Revolut account, then moved the funds onto a cryptocurrency account held in his name, before ultimately moving the funds to an account controlled by the scammer.

But as I've set out above, I think that Revolut still should have recognised that Mr C might have been at risk of financial harm from fraud when he made the last 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 Mr C 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 C's own account does not alter that fact and I think Revolut can fairly be held responsible for his loss in such circumstances. I don't think there is any point of law or principle that says that a complaint should only be considered against either the firm that is the origin of the funds or the point of loss.

I've also considered that Mr C 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 C could instead, or in addition, have sought to complain against those firms. But Mr C 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 C'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.

Revolut has addressed an Administrative Court judgment, which was referred to in a decision on a separate complaint. As I have not referred to or relied on that judgment in reaching my conclusion in relation to the losses for which I consider it fair and reasonable to hold Revolut responsible, I do not intend to comment on it. I note that Revolut says that it has not asked me to analyse how damages would be apportioned in a hypothetical civil action but, rather, it is asking me to consider all of the facts of the case before me when considering what is fair and reasonable, including the role of all the other financial institutions involved. As set out above, there is no evidence that Mr C's bank (which was used to fund the Revolut payments) intervened or provided any warning when he transferred the funds.

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 C's loss on the last payment, (subject to a deduction for Mr C's own contribution which I will consider below).

Should Mr C bear any responsibility for his 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.

I think Mr C should've been concerned at being promised a return of at least 300%. This return is too good to be true and I would've expected Mr C to complete some checks as a result, before making the payments.

Mr C says that he saw positive reviews on B's website. However, if Mr C had conducted basic online checks using B's name, he would've seen an FCA warning (from 2020) that B was being cloned by fraudsters and used as part of scams. He also would've seen the website for the genuine company and realised that they didn't offer the investment opportunity he'd been presented with.

On that basis, I'm satisfied that it's fair for Mr C to share responsibility for his loss and reduce the refund on the last payment by 50%.

Mr C is also entitled to be paid interest on the refund, for being deprived of the use of the funds. This should be 8% simple interest, calculated from the date of the payment until the date of settlement.

Recovery of funds

In this case, Mr C transferred funds from his Revolut account to his cryptocurrency wallet, before the funds were moved onto the scammer. Revolut can only recover funds from the first beneficiary in the chain, Mr C's cryptocurrency wallet was held with the genuine cryptocurrency exchange. As Mr C maintained control of this wallet, he could've recovered any funds that were left in that account. So, I'm satisfied Revolut took appropriate action in trying to recover Mr C's funds.

Putting things right

To put things right I require Revolut Ltd to:

- Refund 50% of the last payment, meaning a refund of £4,355.50 and
- Pay interest on that refund at 8% simple interest per year, calculated from the date of the payment 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 C how much it's taken off. It should also give Mr C 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 C, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 April 2025.

Lisa Lowe
Ombudsman