

The complaint

Mr B is being represented by solicitors. He's complaining about Revolut Ltd because it declined to refund money he lost as a result of fraud.

What happened

Sadly, Mr B fell victim to an investment scam that led him to believe his money was being traded in and generating profits from cryptocurrency. He was in regular contact with the scammer and guided through the process. As part of the scam, he was advised to set up an account with Revolut, which he did in July 2022. He then made the following payments to the scammer from his Revolut account:

Payment no.	Date	Amount £
1	11 August 2022	1,000
2	22 August 2022	20,000
3	28 September 2022	100
4	9 December 2022	1,000
5	9 December 2022	8,363

The payments were sent to accounts in Mr B's own name with two different cryptocurrency providers. Payments 1 to 3 were transfers and payments 4 and 5 were card payments. The money was then transferred to accounts controlled by the scammers. As the scam unfolded, Mr B was able to successfully withdraw £498.70 on 30 August and £3,077 on 28 September.

Mr B viewed fake profits being generated through a platform he was able to access and by late November, he says this was showing his account was valued at over £95,000. When he asked to withdraw his money, he was told he'd need to make a payment of commission. While he says he doesn't remember this being discussed previously, he made the payment on 9 December. When he was asked for more money to withdraw, he realised things weren't right and stopped making payments.

My provisional decision

After the complaint was referred to me, I issued my provisional decision setting out why I thought it should be partly upheld. My reasons 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 a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of their account. In this context, 'authorised' essentially means the customer gave the business an instruction to make a payment from their account. In other words, they knew that money was leaving their account, irrespective of where that money actually went.

In this case, there's no dispute that Mr B authorised the above payments.

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 B 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" (Section 20).

So, Revolut was required by the implied terms of its contract with Mr B and the Payment Services Regulations to carry out his 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 transfers 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 by August 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).

¹ The Payment Services Regulation 2017 Reg. 86(1) 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).

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; and*
- 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 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*

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

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 August 200 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;*
- *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; and*
- *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).*

Taking these points into account, I need to decide whether Revolut acted fairly and reasonably in its dealings with Mr B.

This analysis is focussed on the situation regarding transfers as this was the nature of the payment where I think Revolut should have been able to stop the fraud for reasons I'll come to. I appreciate the situation is slightly different for card payments but I haven't covered this here as the differences don't affect my view on the outcome of the complaint.

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

I'm conscious that one of the key features of a Revolut account is that it facilitates money transfers, often involving large sums. I'm also conscious this was a new account and there was no history of past activity against which the likely validity of these payments could have been judged.

The first payment was relatively small and in my view there was nothing inherently suspicious about it that should have led Revolut to think it could be part of a scam.

But payment 2 was for a much higher amount and there was no history of Mr B making such large payments that Revolut could rely on to conclude this was consistent with normal account activity. So I believe this should have prompted Revolut to intervene to find out more about the payment before processing it.

What did Revolut do to warn Mr B?

Prior to processing payment 1, Revolut says it showed Mr B the following screen:

Review transfer

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. Remember, fraudsters can impersonate others, and we will never ask you to make a payment.

Once this warning was acknowledged by Mr B, Revolut processed the payment. It says no further fraud warnings were provided in connection with payments 2 to 5.

What kind of warning should Revolut have provided?

Having thought carefully about the risk payment 2 presented, I think a proportionate response to that risk would have been for Revolut to attempt to establish the surrounding circumstances before allowing it to debit from Mr B's account. I think it should have done this by, for example, directing him to its in-app chat to discuss the payment further.

If Revolut had intervened in this way, would that have prevented Mr B's losses?

From his correspondence with the scammer that I've seen, there's no evidence Mr B was encouraged to lie about the reason for the payment and I've no other reason to think he wouldn't have answered any questions he was asked honestly.

If Revolut had asked about the reason for the payment, I'm satisfied Mr B would have said that he was investing in cryptocurrency. Once Revolut knew this, it should then have asked a series of questions designed to establish whether the investment could be part of a scam. Amongst other things, as a result of this questioning, Revolut should have been able to establish that Mr B found out about the investment opportunity through social media and was contacted after providing his details online, that a broker/agent he'd never met in person was guiding him through the process, that he'd been instructed to download screen-sharing software, and that he was able to view a platform that purported to show he was making substantial profits.

All of these are common features of investment scams and these discoveries should have led Revolut to explain this to Mr B so he could consider whether he wanted to continue with the payment.

On balance, if this type of intervention had been carried out, I think it's likely such a warning would have resonated with Mr B as he would have recognised many of the common features of investment scams applied to his situation. In the circumstances, I think he would have told Revolut not to continue with payment 2. In saying this, I'm also conscious Revolut has said it's been unable to find any substantial information online from the time about the scammer and this would only have made it more likely

Mr B would have realised he was being scammed if an appropriate intervention by Revolut had prompted him to make further enquiries of his own.

It's for these reasons that I'm currently proposing to uphold Mr B's complaint. Had Revolut intervened in this way and payment 2 been stopped as I've suggested, I think it follows that the later payments wouldn't have been made either.

What about the actions of Mr B's bank?

This was a multi-stage fraud that saw Mr B move money from his bank to Revolut and then eventually onto the scammer. This complaint is about Revolut and it's not appropriate for me to comment here on whether or not the bank should have identified he was at risk of harm from fraud and whether it reacted proportionately. But to obtain a full picture of what took place, we have contacted Mr B's bank to establish if it attempted any kind of intervention before transferring his money to Revolut and, if so, how this affects my assessment of whether or not he acted reasonably in the circumstances.

The bank has told us that it did provide warning messages in connection with some of the payments to Revolut. But these only warned Mr B about scams where a customer is asked to transfer money to another 'safe' account. It's likely he received this warning because he selected that he was transferring money to his own account when asked about the reason for the payments, which would have been a reasonable answer for him to have given in the circumstances. But this wasn't a safe account scam and, on balance, I don't think there was any intervention by his bank that should have alerted him to the fact he was speaking to a scammer or that changes my views about how Revolut should have dealt with this situation and whether Mr B acted reasonably in the circumstances with which he was faced.

Is it fair and reasonable for Revolut to be held responsible for some of [Consumer]'s loss?

In reaching my decision about what's fair and reasonable, I have taken into account that Mr B paid money using his Revolut account to another account in his own name, rather than directly to the scammer, so he remained in control of his money after he made the payments, and there were further steps before the money was lost to the scammer.

However, for the reasons I've set out above, I'm satisfied it would be fair to hold Revolut responsible for Mr B's losses from payment 2, subject to a deduction for his own contribution towards his loss. As I've explained, the potential for multi-stage scams ought to have been well known to Revolut. And as a matter of good practice, I consider it fair and reasonable that Revolut should have been on the look-out for payments presenting an additional scam risk including those involving multi-stage scams.

I have also taken into account that payment 2 was made to a regulated business, and Mr B might potentially have a claim against it in respect of its actions (although that business is not a party to this complaint and so I make no finding about its role here).

Whilst the dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against two financial businesses about connected circumstances, Mr B has not referred a complaint about the recipient of

the payments to me and DISP does not empower me to instruct him to make or refer a complaint to me about another business.

Revolut has argued in submissions to our service that we are applying the provisions of the Contingent Reimbursement Model Code (CRM Code) to complaints against it, despite it not being a signatory and in circumstances where the CRM Code would not, in any case, apply. It's also argued that the Payment Service Regulator's ("PSR") recently introduced mandatory reimbursement scheme would not require Revolut to reimburse Mr B.

I do not seek to treat Revolut as if it were a signatory to the CRM Code. I've explained in some detail the basis on which I think, fairly and reasonably, it ought to have identified Mr B was at risk of financial harm from fraud and taken further steps before payment 2 debited his account.

I'm also aware that the Payment Service Regulator's ("PSR") mandatory reimbursement scheme wouldn't require Revolut to reimburse Mr B.

The PSR's proposals weren't in place at the time of payment 2 and it's not relevant to my decision about what's fair and reasonable in this complaint. But I don't consider the fact that the PSR doesn't propose to make it compulsory for payment service providers to reimburse consumers who transfer money to an account in their own name as part of a multi-stage fraud, means that Revolut shouldn't compensate Mr B in circumstances where it failed to act fairly and reasonably, as I have found was the case here. Indeed, the PSR has recently reminded firms that fraud victims have a right to make complaints and refer them to the Financial Ombudsman Service that exists separately from the intended reimbursement rights and that APP scam victims will still be able to bring complaints where they believe that the conduct of a firm has caused their loss (in addition to any claim under the reimbursement rules).

I do not consider it to be relevant that the circumstances here do not fall under the specific definition of an APP scam set out in the CRM Code, mandatory reimbursement scheme and DISP rules. Those definitions define the scope of the redress schemes and eligibility of payers to complain. They don't preclude me from considering whether Revolut failed to act fairly and reasonably when it made payment 2 without providing an appropriate warning to Mr B. So, I'm satisfied Revolut should fairly and reasonably have provided a warning or made further enquiries before processing the payment. If it had, it's more likely than not that the scam would have been exposed and Mr B wouldn't have lost any more money. In those circumstances I am satisfied it is fair to hold Revolut responsible for at least some of Mr B's loss.

Should Mr B bear any responsibility for his 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. It's on this point where my view of the complaint differs slightly to that of our investigator.

It seems Mr B believed he was being presented with a genuine investment opportunity and I don't think that was necessarily an unreasonable belief initially. But I do think he should have begun to have concerns about what was happening by the time he made payments 4 and 5 on 9 December 2022. At that time, he was being told his money had grown to nearly five times what he invested over a period of only three or four months, which should have sounded too good to be true. And he was

being asked to make a substantial payment covering commission, which he didn't remember being told about, to access his money. I think this ought to have prompted Mr B to make further enquiries and to proceed with great caution. While there might not have been a great deal of information available about the company he was dealing with, I think he could have discovered that his circumstances matched those associated with a common type of scam. Overall, I think it's fair and reasonable for Revolut to make a 50% deduction from the redress payable in connection with payments 4 and 5 only.

Recovery of funds

I've also looked at whether Revolut took the steps it should have once it was aware that the above payments were the result of fraud

Mr B transferred funds to legitimate accounts in his own name. From there, he purchased cryptocurrency and moved it onto a wallet address of his choosing (albeit on the scammers' instructions). If Revolut tried to recover the funds, it could only have tried to do so from Mr B's own accounts and it appears all the money had already been moved on and, if not, anything that was left would still have been available to him to access. So I don't think anything that Revolut could have done differently would have led to these payments being successfully recovered.

In conclusion

For the reasons I've explained, I don't think Revolut acted fairly and reasonably in its dealings with Mr B and I'm upholding this complaint in part.

The responses to my provisional decision

Mr B accepted my provisional decision and Revolut confirmed it had no further comments.

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.

As neither party has made any further submissions my findings haven't changed from those I set out previously.

Putting things right

The principal aim of any award I make must be to return Mr B to the position he'd now be in but for the errors or inappropriate actions of Revolut, while allowing for any responsibility he should reasonably bear. If Revolut had carried out an appropriate intervention as I've described before processing payment 2, I'm satisfied the scam would have been stopped and Mr B would have retained the money that was lost from this and all subsequent payments.

To put things right, Revolut should pay Mr B compensation of $J + K$, where:

- $A = £30,463$, representing the total of all payments to the scam;
- $B = £3,575.70$, representing the total returns received from the scam;
- $C = £26,887.30$, representing the total loss from the scam;

- D = 88.26%, representing the proportion of A that was lost to the scam (C divided by A);
- E = £20,100, representing the total of payments 2 and 3, where no deduction is being made for contributory negligence on Mr B's part;
- F = £17,740.26, representing the proportion of E that was lost to the scam (E x 88.26%);
- G = £9,363, representing the total of payments 4 and 5, where a 50% deduction for contributory negligence is being made;
- H = £8,263.78, representing the portion of G that was lost to the scam (G x 88.26%);
- I = £4,131.89, representing the loss in H with a 50% deduction for contributory negligence; and
- J = £21,872.15; representing the total amount to be refunded taking account of returns from the scam and a 50% deduction for contributory negligence on payments 4 and 5 (F + I).
- K = simple interest on each amount being refunded at 8% per year from the date the payment was made to the date compensation is paid.

Interest is intended to compensate Mr B for the period he was unable to use this money. HM Revenue & Customs (HMRC) requires Revolut to deduct tax from any interest. It must provide Mr B with a certificate showing how much tax has been deducted if he asks for one.

I'm satisfied this represents a fair and reasonable settlement of this complaint.

My final decision

My final decision is that I partly uphold this complaint. Subject to Mr B's acceptance, Revolut Ltd should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 21 February 2025.

James Biles
Ombudsman