

Complaint

Mr P is unhappy that Revolut Ltd didn't reimburse him after he told it he'd fallen victim to a scam.

Background

In late 2023, Mr P was introduced to an investment opportunity by a friend. He was told that he could put his funds under the control of a particular company. It would manage them on his behalf and generate returns. Mr P says that his friend told him that he'd been investing with this company too. He downloaded an app and was given access to a trading portal maintained by the company. This portal provided him with data on the performance of his investments. The set up seemed fairly sophisticated and so Mr P was persuaded he was dealing with a legitimate operation. Unfortunately, and unknown to him at the time, he wasn't dealing with a legitimate company at all. He'd made contact with a fraudster.

He says he was added to a group chat where he could see multiple other investors discussing the platform and the performance of their investments. That also helped persuade him he was likely dealing with a legitimate operation. He says he didn't invest until he'd monitored the group chat for several days. The contents of it persuaded him to do so.

He transferred funds from his account at another bank to his Revolut account and then used his Revolut account to make the following payments:

1	1 November 2023	£500
2	9 November 2023	£1,000
3	17 November 2023	£200
4	20 November 2023	£1,560.02 ¹
5	21 November 2023	£2,885
6	21 November 2023	£1,600

These payments credited an e-wallet at a legitimate third-party cryptocurrency exchange. Mr P's deposits were then converted into cryptocurrency and transferred into the control of the fraudsters.

Once he realised he'd fallen victim to a scam, he notified Revolut. It didn't agree to refund his losses. He wasn't happy with that and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. The Investigator thought that Revolut needed to intervene in connection with payment 5 in the table above. If it had done so, and provided an appropriate warning, this would've prevented Mr P from going ahead with the

¹ This payment was not successfully executed, and so the funds were returned to Mr P's account.

payments. However, he also thought it was fair and reasonable for Mr P to bear partial responsibility for his losses and so the Investigator recommended Revolut make a 50% deduction from any compensation payable.

Revolut disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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 customer'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 P 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 P and the Payment Services Regulations to carry out its instructions promptly, except in the circumstances expressly set out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

I am satisfied that, to comply with regulatory requirements (including the Financial Conduct Authority's "Consumer Duty", which requires financial services firms to act to deliver good outcomes for their customers) Revolut should in November 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.

So, Revolut's standard contractual terms produced a result that limited the situations where it could delay or refuse a payment – so far as is relevant to this complaint – to those where applicable regulations demanded that it do so, or that it make further checks before proceeding with the payment. In those cases, it became obliged to refuse or delay the payment. And, I'm satisfied that those regulatory requirements included adhering to the FCA's Consumer Duty.

The Consumer Duty – as I explain below – requires firms to act to deliver good outcomes for consumers. Whilst the Consumer Duty does not mean that customers will always be protected from bad outcomes, Revolut was required to act to avoid foreseeable harm by, for example, operating adequate systems to detect and prevent fraud. The Consumer Duty is therefore an example of a regulatory requirement that could, by virtue of the express terms of the contract and depending on the circumstances, oblige Revolut to refuse or delay a payment notwithstanding the starting position at law described in *Philipp*.

I have taken both the starting position at law and the express terms of Revolut's contract into account when deciding what is fair and reasonable. I am also mindful that in practice, whilst its terms and conditions referred to both refusal and delay, the card payment system rules meant that Revolut could not in practice delay a card payment, it could only decline ('refuse') the payment.

But 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 November 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 EMIs 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;

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/

- 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 from October 2023, Revolut operated a process where, if it identified a scam risk associated with a card payment through its automated systems, it might initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat). If Revolut was satisfied with the response to those questions and/or it provided a relevant warning, the consumer could use the card again to instruct the same payment and Revolut would then make the payment.

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 *“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).
- Since 31 July 2023, under the FCA’s Consumer Duty⁴, regulated firms (like Revolut) must act to deliver good outcomes for customers (Principle 12) and must avoid causing foreseeable harm to retail customers (PRIN 2A.2.8R). Avoiding foreseeable harm includes ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm (PRIN 2A.2.10G). One example of foreseeable harm given by the FCA in its final non-handbook guidance on the application of the duty was *“consumers becoming victims to scams relating to their financial products for example, due to a firm’s inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the*

³ BSI: PAS 17271: 2017” Protecting customers from financial harm as result of fraud or financial abuse”

⁴ Prior to the Consumer Duty, FCA regulated firms were required to “pay due regard to the interests of its customers and treat them fairly.” (FCA Principle for Businesses 6). As from 31 July 2023 the Consumer Duty applies to all open products and services.

*effectiveness of scam warning messages presented to customers*⁵.

- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency⁶ when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name. And, increasingly, we have seen the use of an EMI (like Revolut) as an intermediate step between a high street bank account and cryptocurrency wallet.
- The main card networks, Visa and Mastercard, don't allow for a delay between receipt of a payment instruction and its acceptance: the card issuer has to choose straight away whether to accept or refuse the payment. They also place certain restrictions on their card issuers' right to decline payment instructions. The essential effect of these restrictions is to prevent indiscriminate refusal of whole classes of transaction, such as by location. The network rules did not, however, prevent card issuers from declining particular payment instructions from a customer, based on a perceived risk of fraud that arose from that customer's pattern of usage. It was therefore 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 November 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;
- have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;
- 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 November 2023 Revolut should in any event have taken these steps.

⁵ The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

⁶ Keeping abreast of changes in fraudulent practices and responding to these is recognised as key in the battle against financial crime: see, for example, paragraph 4.5 of the BSI Code and PRIN 2A.2.10(4)G.

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

I recognise that there were some difficulties from Revolut's perspective in terms of identifying fraud risk with these payments. Mr P had opened his account several months before but had only used it occasionally for low-value, day-to-day transactions. It doesn't look like it was his main account. That meant Revolut didn't have useful data to serve as a basis of comparison when deciding whether any of these payments indicated he might be at risk of financial harm due to fraud.

However, at the point the scam began, there was a noticeable change in the way the account was being used. He began transferring much larger sums, in relatively quick succession, to a known cryptocurrency exchange. That pattern marked a departure from his normal use of the account and should have prompted closer attention. I accept that the earlier payments wouldn't have stood out in isolation. While the destination (a cryptocurrency exchange) may carry some risk, the value of the payments is also a relevant risk factor and so I don't think Revolut needed to intervene at that stage.

The Investigator identified payment 5 as the point at which Revolut needed to take some action and I'd agree with that conclusion. It was significantly higher in value than previous payments, and it followed an unsuccessful payment attempt the day before. This sequence might have pointed to urgency or pressure on Mr P's part. Furthermore, the speed and scale of the transfers, the switch in account usage, and the specific context of repeated payments to a cryptocurrency exchange were collectively unusual enough to make some action on Revolut's part necessary.

I don't think the risk was so clear that it required a human intervention. Instead, I think a warning tailored to the specific fraud risk would've been a proportionate response to the risk in these circumstances. I've thought carefully about what a proportionate warning would look like in these circumstances. I've considered that many payments which look similar to this one will be entirely genuine. And I've considered Revolut's primary obligation to process payments promptly. But by November 2023, when these payments took place, the FCA's Consumer Duty was in force. It requires firms to act to deliver good outcomes for consumers, including avoiding foreseeable harm. That includes having systems in place to detect and prevent scams, and to design, test, and tailor warnings that are relevant and effective.

Revolut, like many other firms, had already developed scam warnings. By this point, it should have had systems in place that could identify, as far as possible, the likely type of scam a customer was falling victim to and deliver relevant warnings. I accept that such systems can only work with the information provided by the customer and can't be expected to prevent every scam. But I consider that, by this point in time, Revolut should have attempted to narrow down the type of scam risk in situations like this – for example, by asking a short series of automated questions to clarify the nature of the payment. If it had done so here, I think it would have become clear that Mr P was at risk of falling victim to a cryptocurrency-based investment scam.

At that point, Revolut should have delivered a warning tailored to that specific risk. It should have set out the hallmarks of a typical investment scam – including being promised unrealistic returns and being asked to fund the investment by transferring cryptocurrency into the control of a third party. I've not seen any evidence to suggest Mr P would have been unwilling to answer Revolut's questions honestly. And given how closely his experience mirrored that of a typical investment scam victim, I think it's more likely than not that a tailored warning would've resonated with him. I think it would have prompted him to stop and reconsider, and that he would not have gone ahead with payments 5 and 6.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Revolut wasn't the point of loss here. Mr P transferred funds to his own account with a third party and additional steps were necessary before he lost that money to the fraudsters. I've also taken into account that Mr P transferred funds from his own account at a bank to his Revolut account.

As I've set out in some detail above, I think that Revolut still should have recognised that he might have been at risk of financial harm from fraud when he made payment 5, and in those circumstances it should have declined the payment and made further enquiries. If it had taken those steps, I am satisfied it would have prevented the losses he 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 P'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 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 he could instead, or in addition, have sought to complain against those firms. But he 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 his compensation in circumstances where: the consumer has only complained about one respondent from which he is entitled to recover his 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 Mr P's loss from payment 5 (subject to a deduction for his own contribution which I will consider below).

Should Mr P bear any responsibility for his losses?

I've considered whether it would be fair and reasonable for Mr P to bear partial responsibility for his own losses. In doing so, I've considered what the law says about contributory negligence while keeping in mind that I must decide this complaint based on what I consider to be fair and reasonable in all the circumstances.

Having done so, I think it's fair for a deduction to be made here. I don't know exactly what returns he was told he could expect. I know that it's common for victims of scams like this one to be lured in by the prospect of unrealistically generous returns. I can see from evidence he's submitted that, at around the same time he made payments 5 and 6, he was offered a "bonus" investment with which he was told he could double his money. Such a return wasn't realistic, and I think it should've caused him to question whether the investment was a genuine one.

Mr P says that he only decided to invest after lurking on the WhatsApp group for some time and seeing that others had successfully withdrawn funds. That's not supported by the evidence he's submitted which shows that the group was created around the time he made

the first payment. The Investigator asked Mr P whether any other records of interactions existed, but he wasn't able to provide any.

Overall, while I accept that Mr P was the victim of a cynical scam, I think ought to have taken more care and so I find it fair and reasonable for Revolut to make a 50% deduction from any compensation it pays him.

Final decision

For the reasons I've explained above, I uphold this complaint in part.

If Mr P accepts my final decision, Revolut Ltd needs to refund 50% of payments 5 and 6, less any returns that were received. It should also add 8% simple interest per annum to those sums calculated to run from the date they left Mr P's account until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 June 2025.

James Kimmitt
Ombudsman