

The complaint

Mr D 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 D fell victim to a cryptocurrency investment scam. He says he found an advert on social media purporting to offer healthy returns from trading in cryptocurrency. He responded to the advert and was contacted by the scammer advised him to download screen-sharing software before taking him through the process of setting up an account and investing. The scammer then maintained regular contact with Mr D while the scam played out. During this time he was able to review the progress of his '*investment*' on a fake trading website operated by the scammer.

On the scammer's instructions, Mr D set up an account with Revolut on 10 May 2022, from which he made the following payments to a cryptocurrency account in his own name before transferring the cryptocurrency to accounts controlled by the scammers:

No.	Date	Time	Amount £
1	10 May 2022	17.32	100
2	10 May 2022	17.38	9,400
3	31 May 2022	17.03	21,800
4	9 June 2022	12.14	7,100

His representative says Mr D was told the amounts in payments 3 and 4 were for taxes and other fees the scammer said he needed to pay to withdraw the profits he'd made up to that point. Despite paying these amounts, Mr D received no money back.

The money for all four payments originated from an account with Mr D's bank, from where the funds were transferred to another Electronic Money Institution (EMI), before being transferred to Revolut.

Mr D did complain to his bank and it refunded £3,813.80. He referred that complaint to us but we didn't conclude the bank was at fault and made no award. Mr D hasn't complained to the other EMI.

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

In broad terms, the starting position at law is that 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.

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 D 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 D 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 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 by May 2022 fairly and reasonably have been on the look-out for the

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).

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; 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*

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”

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 May and June 2022 that Revolut should:

- *have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;*
- *have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;*
- *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 D.

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

Revolut has told us it asked Mr D about the purpose of payment 1 and he said he was transferring money to a safe account. Safe account scams are a common type of scam and I think Revolut should have been on alert that Mr D was at risk of harm from fraud from the outset.

While the amount of the first payment was low, payment 2 was much more significant and came only six minutes after payment 1. At this point, I think Revolut should have been very concerned about what might be going on. This is particularly the case if it

was aware the money was actually going to a cryptocurrency account as that's not generally how safe account scams operate.

What did Revolut do to warn Mr D?

Revolut has said that prior to payment 1 it showed Mr D a general warning about scams because he was transferring to a new payee. It says it also asked about the reason for the payment. When Mr D selected that he was moving money to a safe account, it then showed him tailored warnings relating to safe account scams. After seeing these warnings, Mr D opted to continue with the payment.

Revolut has told us that no warnings were given or other intervention attempted before processing payments 2, 3 and 4.

What kind of warning should Revolut have provided?

Given what it knew about payment 1, including the amount and stated purpose, I'm satisfied appropriate warnings were provided before the payment was processed. But as I've said above, I think Revolut should have identified the risks associated with payment 2 were much greater. It already suspected Mr D may be falling victim to a scam, as evidenced by the warnings it gave in connection with payment 1. And payment 2 was made only six minutes later and was for a much higher amount.

Having thought carefully about the heightened risk presented by payment 2, I think a proportionate response to that risk would have been for Revolut to attempt to establish the circumstances surrounding the payment before allowing it to debit Mr D'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 provided a warning of the type described, would that have prevented the losses Mr D suffered from payment 2?

If Revolut had contacted Mr D about the scam, it would have had the opportunity to ask about the purpose of the payment.

It's not clear why Mr D said he was moving money to a safe account when asked about payment 1, but I note that purchasing cryptocurrency wasn't one of the options he was given. Also, the safe account option was the first on the list he was presented with and he may have selected it for this reason. But whatever the reason, I don't think there's sufficient evidence to say Mr D set out to mislead Revolut. In saying this, I'm conscious there's no evidence to show he was coached by the scammer or given a cover story to give to the bank if asked about the payment. If he was being coached to mislead the bank, he presumably wouldn't have said he was transferring money to a safe account as the scammer would have known that was likely to prompt Revolut to intervene.

On balance, I think it's likely that through the in-app chat an appropriately trained and skilled agent would have been able to establish the true purpose of payment 2 was to invest and trade in cryptocurrency. The agent could then have asked about the surrounding circumstances. This questioning should have enabled the agent to establish for example that Mr D found out about the investment opportunity online, and that he was being guided by a third party he'd never met who'd asked him to download screen-sharing software.

Revolut should have known these are all common features of many common investment scams and once this had been established, its agent could have provided a clear and tailored warning about cryptocurrency investment scams and how they commonly operate. This could have included that scam investment opportunities are often discovered online or via social media, they promise extremely high returns, that victims are often guided by a third party and asked to download screen-sharing software. If that had happened, I think this would likely have resonated with Mr D as he'd have recognised much of this in his own circumstances and the scam would have been uncovered. Armed with this information, I think the most likely outcome is that he'd have declined to continue with payment 2 and the scam would have been stopped at that point.

What about the actions of Mr D's bank and the other EMI?

This was a multi-stage fraud that saw Mr D move money from his bank to another EMI, then onto Revolut, then to a cryptocurrency exchange before eventually ending up with the scammer.

As outlined above, Mr D did complain to his bank and ultimately brought that complaint to us. While the bank didn't provide anything beyond generic scam warnings, we concluded it hadn't done anything wrong in processing the payments to the first EMI.

This complaint is about Revolut and it's not appropriate for me to comment here on whether or not the first EMI should have identified Mr D 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 it to establish if it attempted any kind of intervention before transferring the money to Revolut and, if so, how this affects my assessment of whether or not he acted reasonably in the circumstances. In response, the EMI told us no warnings were given before the payments were made.

On balance, I don't think Mr D's bank was at fault or that there was any intervention by the EMI that should particularly have alerted him to the fact he was dealing with a scammer or that changes my views about how Revolut should have dealt with this situation and whether Mr D 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 D 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 D'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 other businesses were involved in the overall process that ended up with payments being made to the scammer, and that Mr D might potentially have a claim against some of them in respect of their actions (although those businesses are not a party to this complaint and so I make no finding about their 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 more than one financial businesses about connected circumstances, Mr D has not referred a complaint about any other business other than his bank to us (where it was concluded the bank wasn't at fault) and DISP does not empower me to instruct him to make or refer a complaint to me about another business.

To be clear, I'm not seeking to treat Revolut as if it were a signatory to the Contingent Reimbursement Model Code (CRM Code) and I'm aware the Payment Service Regulator's ("PSR") recently introduced mandatory reimbursement scheme wouldn't require it to reimburse Mr D. I've explained in some detail the basis on which I think, fairly and reasonably, Revolut ought to have identified Mr D was at risk of financial harm from fraud and taken further steps before payment 2 debited his account.

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 D 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 D. 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 D 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 D's loss.

Should Mr D 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.

I've considered the evidence carefully and, while I accept Mr D believed these payments were being made in connection with a legitimate investment opportunity, I'm not persuaded that belief was a reasonable one throughout the course of the scam.

Based on the information he had at the outset, including the professional looking website being operated by the scammers, I think Mr D was reasonably entitled to believe he was making a genuine investment. So I'm not suggesting any deduction from the redress due in respect of payment 2.

But I'm conscious that by the time of payment 3 when Mr D was looking to take money out, he appears to have been being told he'd made extremely high returns and I think he should reasonably have questioned whether this was too good to be true. In addition, he was told payments 3 and 4 were costs he needed to pay to obtain those returns. There's no indication he'd been told about costs to withdraw previously and in the circumstances, I think he ought to have proceeded only with great caution. If he'd carried out any further research, for example online searches, I think he'd have quickly discovered his circumstances were similar to those commonly associated with investment fraud. Overall, I think it's fair and reasonable for Revolut to make a 50% deduction from the redress payable for payments 3 and 4.

Recovery of funds

I've also looked at whether Revolut could or should have done more to try and recover Mr D's losses once it was aware that the payments were the result of fraud.

In this case, I understand Mr D didn't report the fraud to Revolut until July 2023, more than a year after the payments were made. It's a common feature of this type of scam that the fraudster will move money very quickly to other accounts once received to frustrate any attempted recovery.

I'm also conscious that Mr D transferred funds to a legitimate cryptocurrency account in his own name. From there, he purchased cryptocurrency and moved it onto a wallet address of his choosing, albeit on the scammers' instructions. Revolut could only have tried to recover funds from Mr D's own account 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.

With these points in mind, I don't think anything that Revolut could have done differently would likely to have led to those payments being recovered successfully.

In conclusion

For the reasons I've explained, I don't think Revolut acted fairly and reasonably in its dealings with Mr D and I'm currently proposing to uphold this complaint in part.

The responses to my provisional decision

Mr D accepted my provisional decision and Revolut provided no further comment.

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 D 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 D would have retained the money that was lost from this and all subsequent payments. On this basis, I've concluded that 100% of payment 2 should be refunded. But after considering whether Mr D should bear some responsibility for his loss, I've concluded that Revolut should only refund 50% of payments 3 and 4.

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

- $A = £38,400$, representing the total of all payments to the scam;
- $B = £3,813.80$, representing the amount refunded by his bank;
- $C = £34,586.20$, representing the total loss from the scam ($B - A$);
- $D = 90.07\%$, representing the proportion of A that was lost to the scam (C divided by A);
- $E = £9,400$, representing payment 2, where no deduction is being made for contributory negligence on Mr D's part;
- $F = £8,466.58$, representing the proportion of E that was lost to the scam ($E \times 90.07\%$);
- $G = £28,900$, representing the total of payments 3 and 4, where a 50% deduction for contributory negligence is being made;
- $H = £26,030.23$, representing the portion of G that was lost to the scam ($G \times 90.07\%$);
- $I = £13,015.12$, representing the loss in H with a 50% deduction for contributory negligence;
- $J = £21,481.70$, representing the total amount to be refunded taking account of the amount refunded by his bank and a 50% deduction for contributory negligence on payments 3 and 4 ($F + I$); and
- K = simple interest on each amount being refunded at 8% per year from the date the corresponding payment was made to the date compensation is paid.

Interest is intended to compensate Mr D 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 D 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 D'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 D to accept or reject my decision before 11 March 2025.

James Biles
Ombudsman