

## The complaint

Mr V complains that Revolut Ltd did not refund the money he lost to a scam.

## What happened

Mr V found an advert online for an investment company I'll refer to as 'J', which was being advertised by a well-known celebrity. Mr V began speaking with an account manager and was advised to open an account with Revolut as well as download screen sharing software so they could help facilitate trades for him. Mr V began trading and received some modest returns, which convinced him to invest more. He made the following card payments from his Revolut account to his crypto wallet, before passing it onto J:

Payment #	Date	Amount
1	13/12/2022	£1,500
2	16/12/2022	£5,000
3	16/12/2022	£5,000
4	16/12/2022	£5,000
5	16/12/2022	£5,000
6	22/12/2022	£5,000
7	22/12/2022	£5,000
8	22/12/2022	£5,000
9	22/12/2022	£5,000
10	22/12/2022	£5,000
11	22/12/2022	£5,000
12	27/01/2023	£1,000

Each time Mr V tried to withdraw his earnings, he was given a reason as to why he had to pay additional funds either due to an error J made or as part of fees. When he paid these amounts and was still unable to withdraw his funds, he felt he had been the victim of a scam.

Eventually Mr V raised a scam claim with Revolut, who issued a final response letter in October 2023. This explained they could not raise chargeback claims for the card payments, as they had gone to a legitimate merchant for a legitimate purpose. And they did not agree to reimburse Mr V.

The complaint was referred to our service and our Investigator looked into it. They felt Revolut should have intervened on the 4<sup>th</sup> payment made on 16 December 2022, as by that point Mr V had sent £20,000 in the space of a few minutes to the same payee. And they felt that if Revolut had intervened, the scam could have been revealed as Mr V had been honest about the purpose of the funds with a third-party bank that he used to credit his Revolut account. As Mr V had not yet forwarded the money sent to his crypto wallet that day to J, the Investigator felt Revolut could have prevented all of the loss incurred from the first payment on 16 December 2022 onwards. So, they recommend reimbursement from the payment 2 onwards along with 8% simple interest.

Mr V accepted the findings but Revolut did not. They raised a number of points, including that the loss did not occur with them and that other banks were involved in the payment

journey.

As an informal agreement could not be reached, the complaint has been passed to me for a final decision.

### **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.

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 V modified the starting position described in *Philipp*, by – among other things – expressly requiring Revolut to refuse or delay a payment "*if legal or regulatory requirements prevent us from making the payment or mean that we need to carry out further checks*" (section 20).

So Revolut was required by the terms of its contract to refuse payments in certain circumstances, including to comply with regulatory requirements such as the Financial Conduct Authority's Principle for Businesses 6, which required financial services firms to pay due regard to the interests of their customers and treat them fairly. I am satisfied that paying due regard to the interests of its customers and treating them fairly meant Revolut should have been on the look-out for the possibility of fraud and refused card payments in some circumstances to carry out further checks.

I must also take into account that the basis on which I am required to decide complaints is broader than the simple application of contractual terms and the regulatory requirements referenced in those contractual terms. I must determine the complaint by reference to what is, in my opinion, fair and reasonable in all the circumstances of the case (DISP 3.6.1R) taking into account the considerations set out at DISP 3.6.4R.

Whilst the relevant regulations and law (including the law of contract) are both things I must

take into account in deciding this complaint, I'm also obliged to take into account regulator's guidance and standards, relevant codes of practice and, where appropriate, what I consider to have been good industry practice at the relevant time: see DISP 3.6.4R. So, in addition to taking into account the legal position created by Revolut's standard contractual terms, I also must have regard to these other matters in reaching my decision.

Looking at what is fair and reasonable on the basis set out at DISP 3.6.4R, I consider that Revolut should in December 2022 have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.

In reaching the view that Revolut should have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances, I am mindful that in practice all banks and EMI's like Revolut did in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;<sup>1</sup>
- 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.

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)<sup>2</sup>.
- 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.

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<sup>1</sup> 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/](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/)

<sup>2</sup> Since 31 July 2023 under the FCA's new Consumer Duty package of measures, banks and other regulated firms must act to deliver good outcomes for customers (Principle 12), but the circumstances of this complaint pre-date the Consumer Duty and so it does not apply.

- The October 2017, BSI Code<sup>3</sup>, 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.
- The main card networks, Visa and Mastercard, don't allow for a delay between receipt of a payment instruction and its acceptance: the card issuer has to choose straight away whether to accept or refuse the payment. They also place certain restrictions on their card issuers' right to decline payment instructions. The essential effect of these restrictions is to prevent indiscriminate refusal of whole classes of transaction, such as by location. The network rules did not, however, prevent card issuers from declining particular payment instructions from a customer, based on a perceived risk of fraud that arose from that customer's pattern of usage. So it was open to Revolut to decline card payments where it suspected fraud.

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 December 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;
- 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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<sup>3</sup> BSI: PAS 17271: 2017" Protecting customers from financial harm as result of fraud or financial abuse"

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 December 2022, Revolut should in any event have taken these steps.

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

I've reviewed Mr V's statements and I can see the account was newly opened when the scam occurred, so there was no genuine account activity Revolut could compare the scam payments to. On 16 December 2022, Mr V sent four individual payments of £5,000 to a relatively new payee in the space of under five minutes. On balance, I think Revolut could have seen this as unusual. The combined value of the payments was high, and they were in very quick succession. There is little reason for an individual to pay the same payee multiple times in quick succession other than to break up a high value payment to make it more likely to bypass security systems. On balance, I think by the final payment on 16 December 2022, Revolut should have been on notice that Mr V may be at risk of financial harm.

*What did Revolut do to warn Mr V and what kind of warning should they have provided?*

Revolut have explained that the payments were authorised by Mr V and that he would have had to confirm he was happy to make the payments in his Revolut app. But they did not provide any additional warnings or interventions in any of the payments.

As explained above, I think the fourth payment on 16 December 2022 was unusual and I think this warranted an intervention from Revolut. On balance, I think a proportionate response to that risk would be for Revolut to have attempted to establish the circumstances surrounding the payment before allowing it to debit Mr V's account. I think it should have done this by, for example, directing Mr V to its in-app chat to discuss the payment further.

*If Revolut had referred Mr V to an in-app chat, would that have prevented the losses consumer he suffered from Payment 5?*

Having carefully reviewed the evidence available to me, I think it is more likely an intervention on payment 5 would have revealed the scam and prevented Mr V from making further payments toward the scam. I've listened to an intervention call that occurred between Mr V and this third-party account provider who he used to credit his Revolut account. This call occurred on 15 December when Mr V transferred £10,000 from his third-party account to his Revolut account. In this phone call, Mr V was asked what the purpose of the transfer was, and he confirmed he was going to trade with it. The third-party bank went on to give him some warnings relevant to safe account scams and then processed the payment.

Having listened to this, I think it is more likely Mr V would have been open and honest with Revolut had they referred him to an in-app chat to discuss the payments. And I also think it is more likely this discussion would have happened in his native language so he would have been able to express himself fully, as Revolut did for him when he raised the scam claim.

As the payments were clearly going to a cryptocurrency provider, and I think Mr V would have explained he was trading with the money, I would have expected Revolut to find out more information about the investment opportunity. As Mr V's complaint has many hallmarks of a typical investment scam, I think Revolut would have been able to quickly identify what he had fallen victim to. I say this because a celebrity had endorsed the investment, Mr V had been told to open his Revolut account and download Anydesk as part of the scam and he had been assigned an 'account manager' who would help him with trades. These are all known features of a cryptocurrency investment scam and I think Revolut could have picked up on this.

I therefore think Revolut missed an opportunity to meaningfully reveal the scam and prevent Mr V from making further payments towards it. Also, at the point Mr V made payment 5, payments 2, 3 and 4 had not yet been sent onto J's wallet, meaning the loss had not yet been incurred. I therefore think had Revolut intervened on payments 5, they also could have prevented all of the loss from payment 2 onwards.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr V purchased cryptocurrency which credited an e-wallet held in his own name, rather than making a payment directly to the fraudsters. So, he remained in control of his money after he made the payments from his Revolut account, and it took further steps before the money was lost to the fraudsters.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr V 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 Mr V 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 V'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 V 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 Mr V 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 V'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.

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 V's loss from payment 2.

*Should Mr V bear any responsibility for his losses?*

I've finally considered whether Mr V should reasonably bear some responsibility for the losses as a result of any negligence in his actions and if it is therefore reasonable for me to make a reduction in the award based on this. In doing so, I've considered whether Mr V has acted as a reasonable person would to protect himself against the loss he suffered. The test is objective but needs to take account of the relevant circumstances.

Unfortunately, the majority of the contact with the scammer occurred on a messaging platform which the scammer has since deleted the chat from. So, I have limited information to consider. Mr V says he was persuaded the individuals he was speaking to were genuine and that he had many phone calls with them. I can see that when they sent messages it was in Mr V's own language, and I can understand why Mr V built a rapport with them. I have

also seen a brief screenshot of the app Mr V was using for the investment, and this did appear to be professional.

From what I have seen from searching for J, there is little information available online about them, and even less information showing what would have been available in December 2022 when Mr V made the payments. But there is nothing clearly setting out this was a scam or that Mr V should reasonably have had concerns had he looked into them in more detail.

I appreciate Revolut's comments that Mr V could have checked to see if the celebrity who appeared to endorse the investment was actually linked to it. However, without seeing the advert itself it is difficult for me to know how convincing it may have been. And I don't think this alone meant Mr V should have had concerns about J as a whole. Mr V has said he was not promised set returns, but was instead told the more he invested, the more returns he would receive. With this in mind, there is nothing to suggest he was promised returns that were too good to be true.

On balance, I do not think a reduction in the redress is reasonable in the circumstances of this complaint.

### **Putting things right**

Revolut Ltd should reimburse Mr V from payment 2 onwards, and should include 8% simple interest from the date of the transactions to 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 V how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

I uphold Mr V's complaint in part. Revolut Ltd should pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 24 April 2025.

Rebecca Norris

**Ombudsman**