

The complaint

Mr S is unhappy that Revolut Ltd haven't refunded money he lost as a result of a scam.

Mr S is being represented by a claims management company but for ease of I'll only refer to Mr S in the decision.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Around July 2023 Mr S saw an advert by a merchant on social media promoting an investment opportunity. He called the number and spoke to a representative of the merchant who explained they would act as an investment broker who would trade cryptocurrencies on his behalf. Mr S said he did some research on the merchant and was happy with what he found. He was provided a link to a trading platform which he followed and opened before downloading a screen sharing platform to let the merchant monitor his account. Mr S began to see some good profits in July 2023, so he continued to invest. He then asked to withdraw his funds but was told he would need to make further payments for fees which he made between August and November 2023. After making the payments towards the fee he was asked to pay a further fee which is when he realised he had been scammed. In total, Mr S made the following payments in relation to this scam;

	Date	Merchant	Method	Amount
1	11 July 2023	Cryptocurrency exchange	Card Payment	£5,000
2	11 July 2023	Cryptocurrency exchange	Card Payment	£1,000
3	26 July 2023	Cryptocurrency exchange	Card Payment	£5,000
4	26 July 2023	Cryptocurrency exchange	Card Payment	£2,000
5	14 August 2023	Cryptocurrency exchange	Card Payment	£2,450
6	16 August 2023	Cryptocurrency exchange	Card Payment	£2,800
7	16 August 2023	Cryptocurrency exchange	Card Payment	£1,245
8	18 August 2023	Cryptocurrency exchange	Card Payment	£3,400
9	19 August 2023	Third-party	Transfer	€2,061
10	30 August 2023	Third-Party	Transfer	£1,050
Credit	09 September 2023	Third-Party	Credit	£500

Credit	12 September 2023	Third-Party	Credit	£100
Exchange	12 September 2023	Exchanged to BTC	Exchange	€2,307
11	12 September 2023	Cryptocurrency Withdrawal BTC	Cryptocurrency withdrawal	0.09096707
Exchange	15 September 2023	Exchanged to BTC	Exchange	€2,340
12	15 September 2023	Cryptocurrency Withdrawal BTC	Cryptocurrency withdrawal	-0.09023915
Credit	30 September 2023	Cryptocurrency exchange	Credit	£430.61
Credit	01 October 2023	Cryptocurrency exchange	Credit	£50
Reverted	02 October 2023	Cryptocurrency exchange	Reverted Card Payment	£1,060
13	02 October 2023	Cryptocurrency exchange	Card Payment	£1,060
Withdrawal	02 October 2023		Credit from scammers	£1,060
Credit	06 October 2023	Cryptocurrency exchange	Credit	£173.49
14	07 October 2023	Cryptocurrency Withdrawal BTC	Cryptocurrency withdrawal	-0.01210797
Exchange	07 October 2023	Exchanged to BTC	Exchange	£670
15*	07 October 2023	Cryptocurrency Withdrawal BTC	Cryptocurrency withdrawal	-0.02804966
Exchange*	09 October 2023	Exchanged to BTC	Exchange	£952
Exchange	09 October 2023	Exchanged to GBP	Exchange	-0.04063839
16	09 October 2023	Third-Party	Transfer	€1,020
17	13 October 2023	Cryptocurrency exchange	Transfer	£1,460
Credit	07 November 2023	Cryptocurrency exchange	Credit	£18.89
18*	17 November 2023	Cryptocurrency exchange	Card Payment	£25
19*	17 November 2023	Cryptocurrency exchange	Card Payment	£25
			Total GBP	£25,415
			Total EURO	€3,081

Mr S contacted Revolut to make a claim but it said it wouldn't be offering a refund because it hadn't done anything wrong. So, he brought his complaint to the Financial Ombudsman.

Our Investigator thought the complaint should be upheld in part. She didn't think the sending of cryptocurrency by Mr S was within the Financial Ombudsman's jurisdiction, but the remaining complaint points about the acceptance of deposits into the account, exchanging fiat into cryptocurrency and the remaining attempted/completed bank transfers/card payments were within our jurisdiction.

Our Investigator said that Revolut should've stopped the first payment here and provided a cryptocurrency scam warning, but this would've unlikely resonated with Mr S at that point. The investigator said that payment 9 should've been stopped by Revolut and although Mr S said it was being made as part of a safe account scam Revolut asking Mr S to discuss the payment via its in-app chat would've more than likely uncovered the scam. So, our Investigator said Revolut should refund payments 9 to 17 but it could deduct 50% to any award because Mr S contributed to his losses here. Our Investigator asked Revolut to refund the cryptocurrency withdrawals (minus a 50% reduction) because this money wouldn't have been lost from the account if Revolut had intervened on payment 9.

Mr S agreed with our Investigator's opinion.

But Revolut disagreed and asked for an Ombudsman's review. It said that the payments were sent on from the Revolut account to accounts in Mr S's name, so the loss didn't occur from this account because they were self to self. It said the Financial Ombudsman's reliance on *R v FOS* [2022] EWHC 710 is misconceived and amounts to a legal error because that decision was a permission decision that doesn't set a precedent like a judgment would. Revolut added that interventions by other banks should be considered as well, and complaints made to those other institutions to share liability. Revolut disagreed that the Financial Ombudsman could request a refund for the cryptocurrency withdrawals because it was an unregulated activity with the Financial Conduct Authority (FCA).

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.

Having done so, I agree with our Investigator that this complaint should be upheld in part and for largely the same reasons.

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

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

The exchange into BTC on 09 October 2023 for £952 and payments 18 and 19 haven't been added to the total loss here which the investigator has already explained. Mr S has accepted the opinion, so I won't comment on those payments any further here.

Mr S has said the credits to the account from a cryptocurrency exchange on 30 September 2023 £430.61, 06 October 2023 £173.49, 07 November 2023 £18.89 were from funds he held at that cryptocurrency exchange already. There was one attempted payment to the same exchange but this was declined. So, on balance, I've decided that money was also used to fund this scam and shouldn't reasonably be deducted from the total loss.

Revolut has addressed an Administrative Court judgment (*R vs FOS*), which was referred to in a decision on a separate complaint. As I have not referred to or relied on that judgment in reaching my conclusion in relation to the losses for which I consider it fair and reasonable to hold Revolut responsible, I do not intend to comment on it. I note that Revolut says that it has not asked me to analyse how damages would be apportioned in a hypothetical civil

action but, rather, it is asking me to consider all of the facts of the case before me when considering what is fair and reasonable, including the role of all the other financial institutions involved.

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 S 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 19).

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.

In practice Revolut did in some instances refuse or delay payments at the time where it suspected its customer might be at risk of falling victim to a scam.

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 July - October 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 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;¹
- 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.

For example, it is my understanding that in July - October 2023, Revolut, whereby if it identified a scam risk associated with a card payment through its automated systems, could (and sometimes did) initially decline to make that payment, in order to ask some additional questions (for example through its in-app chat).

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)².
- 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

¹ 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/>

² 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.

have had concerns about money laundering or financing terrorism here, but I nevertheless consider these requirements to be relevant to the consideration of Revolut's obligation to monitor its customer's accounts and scrutinise transactions.

- The October 2017, BSI Code³, which a number of banks and trade associations were involved in the development of, recommended firms look to identify and help prevent transactions – particularly unusual or out of character transactions – that could involve fraud or be the result of a scam. Not all firms signed the BSI Code (and Revolut was not a signatory), but the standards and expectations it referred to represented a fair articulation of what was, in my opinion, already good industry practice in October 2017 particularly around fraud prevention, and it remains a starting point for what I consider to be the minimum standards of good industry practice now (regardless of the fact the BSI was withdrawn in 2022).
- Revolut should also have been aware of the increase in multi-stage fraud, particularly involving cryptocurrency when considering the scams that its customers might become victim to. Multi-stage fraud involves money passing through more than one account under the consumer's control before being sent to a fraudster. Our service has seen a significant increase in this type of fraud over the past few years – particularly where the immediate destination of funds is a cryptocurrency wallet held in the consumer's own name. And, increasingly, we have seen the use of an EMI (like Revolut) as an intermediate step between a high street bank account and cryptocurrency wallet.
- 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, 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 July - October 2023 that Revolut should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;
- have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer;
- in some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, or provided additional warnings, before processing a payment – (as in practice Revolut sometimes does); and

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

- 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 July - October 2023, Revolut should in any event have taken these steps.

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

It isn't in dispute that Mr S has fallen victim to a cruel scam here, nor that he authorised the payments he made by card to his cryptocurrency wallet (from where that cryptocurrency was subsequently transferred to the scammer).

By July - October 2023, when these transactions took place, firms like Revolut had been aware of the risk of multi-stage scams involving cryptocurrency for some time. Scams involving cryptocurrency have increased over time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency scams have continued to increase since. They reached record levels in 2022. During that time, cryptocurrency was typically allowed to be purchased through many high street banks with few restrictions.

By the end of 2022, however, many of the high street banks had taken steps to either limit their customer's ability to purchase cryptocurrency using their bank accounts or increase friction in relation to cryptocurrency related payments, owing to the elevated risk associated with such transactions. And by July - October 2023, when these payments took place, further restrictions were in place. This left a smaller number of payment service providers, including Revolut, that allowed customers to use their accounts to purchase cryptocurrency with few restrictions. These restrictions – and the reasons for them – would have been well known across the industry.

I recognise that, as a result of the actions of other payment service providers, many customers who wish to purchase cryptocurrency for legitimate purposes will be more likely to use the services of an EMI, such as Revolut. And I'm also mindful that a significant majority of cryptocurrency purchases made using a Revolut account will be legitimate and not related to any kind of fraud (as Revolut has told our service). However, our service has also seen numerous examples of consumers being directed by fraudsters to use Revolut accounts in order to facilitate the movement of the victim's money from their high street bank account to a cryptocurrency provider, a fact that Revolut is aware of.

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

To be clear, I'm not suggesting as Revolut argues that, as a general principle (under the Consumer Duty or otherwise), Revolut should have more concern about payments being made to a customer's own account than those which are being made to third party payees. As I've set out in some detail above, it is the specific risk associated with cryptocurrency between July - October 2023 that, in some circumstances, should have caused Revolut to

consider transactions to cryptocurrency providers as carrying an increased risk of fraud and the associated harm.

In those circumstances, as a matter of what I consider to have been fair and reasonable, good practice and to comply with regulatory requirements, Revolut should have had appropriate systems for making checks and delivering warnings before it processed such payments. And as I have explained Revolut was also required by the terms of its contract to refuse or delay payments where regulatory requirements meant it needed to carry out further checks. Taking all of the above into account, and in light of the increase in multi-stage fraud, particularly involving cryptocurrency, I don't think that the fact most of the payments in this case were going to an account held in Mr S's own name should have led Revolut to believe there wasn't a risk of fraud.

So I've gone onto consider, taking into account what Revolut knew about the payments, at what point, if any, it ought to have identified that Mr S might be at a heightened risk of fraud that merited its intervention.

When the first payment was made towards this scam, I think Revolut should've reasonably been concerned here. Although the account was opened in 2019, I think Mr S suddenly sending £5,000 to a high-risk cryptocurrency exchange should've given Revolut some cause for concern at that point. But at that point I think Revolut should've provided a warning on the app to Mr S. So, I need to think whether that would've stopped the scam.

Having done so, I don't think a cryptocurrency scam warning would've resonated with Mr S at that point of the scam. I'd expect such a warning to mention unexpected calls from third-parties, pressure being applied to invest and paying to receive funds/profits. However, those weren't relevant to Mr S at that point of the scam. So, given what I've mentioned above and that he was happy with the research he had completed, I don't think he would've – on balance – stopped and reconsidered the payments he was making at that point.

By the time Mr S sent the ninth payment on 19 August 2023 towards this scam I think there was enough happening here that Revolut should've been suspicious. There were three declined payments to cryptocurrency exchanges in twenty minutes before payment 9 was sent. And by this point over £20,000 had been sent and attempted from the account to a variety of cryptocurrency exchanges. And he selected 'safe account' as the payment reason which should've seemed odd to Revolut at the time.

Taking that into account and that Revolut had already provided a cryptocurrency scam warning, I think Revolut ought, when Mr S attempted to make the ninth payment towards the scam, knowing that the payment was going to a cryptocurrency provider and that he said it was for a 'safe account', to have invited him to explain why he was making the payment and speak to him via the in-app chat.

I note Mr S had opened the account before he was scammed and used it for genuine transactions. But given what Revolut knew about the destination of the payment and the account activity, I think that the circumstances should've led Revolut to consider that Mr S was at heightened risk of financial harm from fraud. In line with good industry practice and regulatory requirements, I am satisfied that it is fair and reasonable to conclude that Revolut should have warned its customer before this payment went ahead.

Would Revolut inviting Mr S to discuss payment 9 on the in-app chat have uncovered the scam?

I think given what I've explained above (and that I've not seen evidence that Mr S was being coached or pressured into lying to Revolut by the scammers) the inaccurate payment reason

and the account activity would've been suspicious and easily uncovered by a few probing questions on the app by Revolut. I'm satisfied Mr S would've answered those accurately and said to Revolut that he was paying a fee towards a cryptocurrency investment withdrawal which would've then enabled Revolut to explain to him that he was very likely being scammed.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr S paid money using his Revolut account to another account in his own name, rather than directly to the fraudster, 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 have set out above, I am satisfied that it would be fair to hold Revolut responsible for Mr S's losses that I've set out here. As I have explained, the potential for multi-stage scams, particularly those involving cryptocurrency, 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.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr S might have been at risk of financial harm from fraud when they made the eleventh payment, 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/or wasn't lost at the point it was transferred to Mr S's own account does not alter that fact and I think Revolut can fairly be held responsible for Mr S's 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.

Should Mr S bear any responsibility for his loss?

I've considered Mr S's role in what happened – taking into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

Having done so I'm not satisfied Mr S completed a reasonable amount of checks here and if he had he would've likely seen some negative reviews about the 'merchant' he was dealing with. Some of these reviews he later mentions in the chat messages with the scammers.

As a result, I think Revolut can fairly reduce Mr S's award here by 50%.

Could Revolut have done anything else to recover Mr S's money?

I've thought about whether Revolut did enough to attempt to recover the money Mr S lost, as there are some instances where debit card transactions can be refunded through making a chargeback claim.

A chargeback wouldn't have been successful for the debit card payments to the account in Mr S's name at the genuine cryptocurrency exchanges, as Mr S was able to move the money onto the scammers. So, Mr S duly received the service he paid for on his debit card. The money was subsequently lost from his other account when it was moved by the scammers. So, he couldn't claim that he didn't receive the goods or services paid for from his Revolut account to the cryptocurrency exchange.

As a result, I don't think Revolut have acted unreasonably by failing to pursue a chargeback claim or try and recover Mr S's money here.

Nor would it have been possible to recover any funds lost via transfers as Mr S has confirmed these were sent on to the scammers.

Mr S has asked for compensation from Revolut. The investigator didn't make any further compensatory award. Mr S accepted the investigator's opinion, so I won't go into any further detail here other than to say I agree with her reasoning for not making any further award here.

Awarding of interest

There are a variety of payments towards this scam some of which were funded by third parties. When funds are borrowed from third parties this service wouldn't normally award interest where those funds haven't been repaid by Mr S. Here, Mr S has said he has partially refunded some of those third parties. In the circumstances I think it would be easier for Revolut to pay 8% simple interest on the total award here rather than calculate the exact amount of refunds Mr S has made to a variety of third parties.

Cryptocurrency exchanges and withdrawals

I've issued a jurisdiction decision to explain why the cryptocurrency withdrawals aren't themselves regulated but because they are part of the same scam and resulted from other regulated activities (deposit of fiat currency and subsequent exchange into cryptocurrency) Revolut can be reasonably asked to refund these payments.

And because I've decided that Revolut should've reasonably intervened earlier these subsequent exchanges and cryptocurrency withdrawals wouldn't have occurred.

So, Revolut should do the following;

- Refund 50% of the cryptocurrency withdrawals in their equivalent GBP values on the day they were sent.
- Refund 50% of the fees incurred in the exchanges.
- Pay 8% simple interest per year on the above from the date of the withdrawal to the date of settlement.

My final decision

For the reasons given above, I uphold in part this complaint and direct Revolut Ltd to pay Mr S;

- Refund all payments (including the cryptocurrency withdrawals) from and including payment 9 to payment 17 minus 50%.
- Add 8% simple interest per year on that amount from the date of the payments to the date of settlement.
- Refund 50% of the cryptocurrency withdrawals in their equivalent GBP values on the day they were sent.

- Refund 50% of the fees incurred in the exchanges.
- Pay 8% simple interest per year on the above from the date of the withdrawal to the date of settlement.

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

Mark Dobson
Ombudsman