

The complaint

Mr O complains that Revolut Ltd won't refund money he lost when he fell victim to an investment scam.

Mr O is being represented by solicitors in his complaint.

What happened

The details of this complaint are well known to both parties and have also been previously set out by the investigator in their view. So, I'll focus on giving my reasons for my decision.

The complaint concerns three payments totalling approximately £18,000 which were made from Mr O's Revolut account between November 2017 and June 2018 in connection to an investment opportunity with a company "C", that turned out to be a scam. Two of the three payments were cross-border transactions.

After Mr O's case was passed to me, I wrote to his representative informally setting out why I intended agreeing with the investigator's overall outcome even though my reasoning was slightly different. Mr O's representative didn't agree, so it's now appropriate for me to issue a formal 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.

Having done so, I've decided not to uphold it. I'll explain why.

The starting position is that liability for an authorised payment rests with the payer, even when they are duped into making that payment. There's no dispute that Mr O made the disputed payments using his security credentials, and so they are authorised.

But in accordance with the law, regulations and good industry practice, a payment service provider, including an electronic money institution (EMI) like Revolut, should be on the look-out for and protect its customers against the risk of fraud and scams so far as is reasonably possible. If it fails to act on information which ought reasonably to alert it to potential fraud or financial crime, it might be fair and reasonable to hold it liable for losses incurred by its customer as a result.

The investigator concluded that while the first payment – just over £10,500 – was far larger than the payments Mr O had made from his Revolut account, they didn't think it was that unusual such that it ought to have triggered Revolut's fraud detection systems. The investigator explained that Revolut is EMI, and EMIs are typically used differently to a bank. So, a one-off large international payment isn't necessarily out of character given the exchange rate advantage.

I agree with the general point that accounts held with an EMI are typically used differently to those held with a bank or building society. However, in this case, Mr O had been operating his Revolut account for nearly 18 months by the time he made the first disputed transaction. Arguably, Revolut had built enough of a picture of how Mr O normally used his account. While a one-off large payment doesn't in and of itself make the transaction unusual, the largest payment Mr O had made prior to the first disputed transaction was around £500. I consider a transaction nearly 21 times in value ought to have flagged as unusual for the normal account activity. Therefore, in my view, Revolut ought to have made enquiries. We know it didn't intervene at the time. So, an opportunity was missed.

But that isn't the end of the matter, and failure to intervene at the time doesn't automatically mean that Revolut should refund Mr O's losses. Causation is a critical determinative factor. I need to be satisfied, on balance, that an intervention would have positively impacted Mr O's decision-making.

EMIs and other authorised payment institutions ("PI") operate differently and in a different regulatory framework. In broad terms, the well-established codes of practice for fraud prevention don't apply in the same way to EMIs and PIs as they do to banks and building societies.

Strictly speaking, publications and codes aimed at banks and building societies either don't apply or have limited application to EMIs and PIs. Particularly if the transactions in question happened several years ago, as is the case with Mr O's case. And some considerations which have long applied to banks and building societies have only come into force more recently for EMIs and PIs. For instance, the FCA's Principles for Business (PRIN) and Conduct of Business sourcebook (BCOBS) have only applied to EMIs and PIs since August 2019.

What all this means is that in addition to the evolving landscape of fraud and the regulations to combat it, what is considered good industry practice for EMIs in recent years is very different to what would have been considered good six or seven years ago when Mr O's payments were made. So, although I would have expected Revolut to have enquired about the first transaction in dispute, I wouldn't have expected the same level of intervention as I would today.

We know that the Financial Conduct Authority (FCA), the financial services regulator in the UK, had published a warning about C in 2016. However, the disputed payment in question wasn't identifiably going to C. I've kept this in mind when considering what a suitable intervention would have looked like.

In late 2017, I would have considered the extent of Revolut's enquiries to extend to asking Mr O the purpose of the payment. And if advised that it was for investment purposes, to asking Mr O if he had researched the opportunity and satisfied himself that everything was above board. I can't know for certain how Mr O would have responded to Revolut's questions. I'm also mindful that there's no contemporaneous evidence of the communication between him and the third party.

I understand Mr O was in contact with the third party for a few months before making the first disputed payment from his Revolut account. The information that's been provided indicates he may have already sent money (£1,515) in connection with this 'investment opportunity' from another account – possibly another EMI account.

Having carefully thought about this, on balance, I'm not convinced that further enquiries at that time would have led to the scam being uncovered. I think it's most likely Mr O would have told Revolut that he was happy to send the funds as per his original instruction. Even if

I'm wrong about that, I note we've been told the third party was regularly in contact with Mr O. I think it's likely they would have provided reassurances and alleviated any concerns Mr O *might* have raised with them following an intervention by Revolut.

To sum up, although I consider that Revolut should have intervened at the time of the first payment, I'm not persuaded that it would have positively impacted Mr O's decision-making. The second and the third transactions were several months apart and were of a much smaller value. I wouldn't have expected them to have triggered as unusual.

When I attempted to mediate the dispute informally, Mr O's representative said that a warning from Revolut would have caused Mr O to reconsider his decision to send the money. But no reasons were put forward to support that stance. In the absence of any supporting arguments, for the reasons given my finding on causation remain unchanged. I'm not persuaded that an intervention from Revolut at the time of the first disputed payment would have stopped him in his tracks.

I've also thought about whether Revolut could have done more to recover the funds after it became aware of the situation, as in some circumstances the money can be recovered. I'm in agreement with the investigator's findings, namely given the time that had passed before Mr O notified Revolut of the scam, it's unlikely funds would have remained in the beneficiary accounts.

I know that Mr O will be disappointed with this outcome. Not least because the matter has been ongoing for some time. I fully acknowledge that there's a lot of money involved here. Despite my natural sympathy for the situation in which he finds himself, for the reasons given, it wouldn't be fair of me to hold Revolut responsible for his loss.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 1 May 2024.

Gagandeep Singh
Ombudsman