

The complaint

A company, which I'll refer to as N, complain that Revolut Ltd won't refund them for the money lost when their director, Mr L – who brings this complaint on N's behalf – fell victim to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat them all again here. Instead, I'll summarise the key points, and focus on giving reasons for my decision.

Around September 2022, Mr L was contacted by who by who he thought was his friend, recommending a cryptocurrency investment opportunity. He made three payments from N's account with Revolut, to a genuine cryptocurrency exchange, and then on to the supposed trading platform. Unfortunately, his friend had been hacked and it was actually a scam.

Mr L complained to Revolut about what had happened. It didn't agree to refund him. It said there weren't grounds to reclaim the funds through the chargeback scheme as the merchant paid directly provided the expected service (i.e. crediting the funds to the cryptocurrency account).

Unhappy with this response, Mr L referred the complaint to our service. Our investigator looked into things and came to the view that Revolut wasn't liable for the loss. He didn't think it had cause to be concerned about the payments at the time, as they appeared in line with previous spending. And he agreed that, in line with the scheme rules, chargeback claims wouldn't have succeeded.

Mr L has appealed the investigator's view. In summary, he explained that other large payments were director's loans to his personal account, or payments to HMRC, and so weren't similar to the scam payments. He thinks Revolut ought to have been concerned because he hadn't paid a cryptocurrency merchant before – and it should have realised such merchants were more likely to be related to a scam.

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 for the following reasons.

In line with the Payment Services Regulations 2017, Revolut is expected to execute authorised payment instructions without undue delay. While it's agreed that Mr L was scammed, he did authorise the payments. So the starting position is that N is liable for them.

However, there are circumstances when it might be appropriate for Revolut, as an electronic money institute (EMI), to identify a fraud risk and to therefore take additional steps before processing a payment. Such as when the payment is significantly unusual or uncharacteristic when compared to the normal use of the account.

These are competing duties, so there is a balance to be struck between identifying payments that could be fraudulent – and responding appropriately to those concerns – and ensuring minimal disruption to legitimate payments.

Mr L started by making two payments, both in the region of \$2,000, to the same cryptocurrency merchant. I'm not persuaded the merchant alone ought to have prompted fraud concerns. They provided a genuine cryptocurrency wallet and weren't part of the scam. And Revolut offers accounts tailored towards cryptocurrency, so wouldn't see that type of payment/payee as particularly unexpected. So I'm not persuaded the fact it was a cryptocurrency merchant, in and of itself, warranted intervention.

Nor do I think the fact Mr L hadn't paid that type of merchant before was unusual enough to have prompted concern. That can, and will, happen for many legitimate reasons. The payments have to be considered within the wider context of the account activity. This was a business account, and it didn't look uncharacteristic for N to make payments of this size. So I can understand why Revolut didn't identify them as suspicious.

While I appreciate the third and final payment was higher (at £7,000), looking at it in the context of N's account use, I still don't think it's fair to hold Revolut at fault for not completing further checks before processing the payment. There was a gap of over a week in between the scam payments. So it wouldn't have appeared that this higher payment was made as a result of immediate pressure – which can be indicative of a scam. It appeared Mr L was paying a legitimate merchant who he had used before.

I know the reason paid Mr L this merchant (before moving the funds on) was due to being tricked by the scam. But what I'm considering here is Revolut's role in this, and what ought to have been apparent to it at the time. I don't think the size of the payment looked particularly uncharacteristic or concerning. As our investigator pointed out, there were several payments for similar or higher amounts in the months leading up to the scam.

I have considered Mr L's point about what the prior high-value payments were for. But I think they still have a bearing on the level of payments Revolut would reasonably see as within the expected range for N. Even for the payments to Mr L's account, those were still going to an external payee, and to an account held in a different capacity. And while the cryptocurrency merchant wasn't a long-standing payee, it wasn't a new payee either.

Taking this altogether, I think it would be placing too high a burden to hold Revolut liable for the loss. I consider it reasonable, when looking at the payments amongst N's usual account activity, that it didn't consider them significantly unusual or suspicious – and so processed them in line with the authorised payment requests it received.

As I've discussed with Mr L, it's also not particularly clear to me that the loss was suffered by N directly – who are the eligible complainant here. Rather, based on his initial response (via a personal representative), there is a suggestion he was investing personally. In which case, it would appear he was using company assets for personal gain, akin to a director's loan – and so would be expected to repay N.

I'd only consider it fair to award N for losses incurred *directly* due to any errors by Revolut. Whereas if Mr L was investing personally, it is his loss. While N may be out of pocket because Mr L's loss means he can't repay them the money he owes, that is not a direct loss.

Mr L has since said the payments *were* business related. I've not seen enough to satisfy me about this change in explanation, nor about how the payments were connected to N. But in any event, as I've not found Revolut at fault, I don't think the case hinges on this point and so I don't require further evidence about this to reach a fair outcome.

The merchant paid also means a claim through the chargeback scheme wouldn't have succeeded. Such claims can only be made against the merchant paid directly. Here, the underlying dispute isn't with the merchant paid direct – who loaded the funds to the cryptocurrency wallet in line with the requests received, and therefore provided the expected service. The loss was only incurred due to the onward transfer from their platform. And so, in the circumstances, Revolut couldn't have done more to recover the funds lost.

I do understand the impact this scam has had on Mr L, and why he is looking to recoup the loss. It's clear he was tricked by a cruel and sophisticated scam, and I'm very sorry to hear how difficult that has been. That said, my role here is to assess Revolut's liability. Having done so, I'm not persuaded any errors by Revolut caused or contributed to the loss incurred. And so I don't consider it fair to direct Revolut to reimburse N, or otherwise offer compensation for what has happened.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask N to accept or reject my decision before 3 November 2023.

Rachel Loughlin
Ombudsman