

## The complaint

Mr H complains that Revolut Ltd (Revolut) is refusing to refund him the amount he lost as the result of a scam.

Mr H is being represented by a third party. To keep things simple, I will refer to Mr H throughout my decision.

## What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr H watched a television programme where the potential of cryptocurrency investment was discussed. Interested in the opportunity to invest Mr H started searching online when he came across a company that I will call X.

Mr H tells us he thought the website looked legitimate and as a result he left his contact information. He was later called back by an individual at X. X explained the opportunity in more detail to Mr H and he decided he wanted to invest.

Mr H and X stayed in constant communication via phone calls and WhatsApp messaging and Mr H continued to make more payments with the belief he was making a legitimate investment.

Mr H was required to download remote access software so that X could help him with the process of investing.

After making several payments Mr H explained that he had used all his available funds, but X kept pressuring him to make more payments. When Mr H made it clear he would not make any further payments and instead wanted to withdraw his profit X stopped communicating with him and it became clear Mr H had fallen victim to a scam.

Mr H made the following payments in relation to the scam from his Revolut Account:

<u>Payment</u>	<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
1	28 June 2022	Wisenix	Debit Card	£3,281.63
2	28 June 2022	Wisenix	Debit Card	£718.56
3	6 July 2022	Wisenix	Debit Card	£3,774.79
4	14 July 2022	Wisenix	Debit Card	£4,227.98
5	14 July 2022	Wisenix	Debit Card	£4,227.58
6	14 July 2022	Wisenix	Debit Card	£1,047.35

Our Investigator considered Mr H's complaint and thought it should be upheld in part. Mr H agreed but Revolut didn't agree, in summary it said:

- there is evidence to suggest Mr H was responsible for his loss

- several points which it considers key to the outcome of the complaint have been omitted at the time of issuing the view
- although the FOS is permitted to depart from the law, if they do so they should say so in their decision and explain why
- There are no legal obligations, regulatory obligations, industry guidance, standards or codes of practice that apply to Revolut that oblige it to refund victims of authorised push payment (“APP”) fraud. By suggesting that it does need to reimburse customers, it says our service is erring in law
- The fraudulent activity did not take place on the Revolut platform, it was just an intermediary link
- It has no legal duty to prevent fraud and it must comply strictly and promptly with valid payment instructions. It does not need to concern itself with the wisdom of those instructions. This was confirmed in the recent Supreme Court judgement in the case of Philipp v Barclays Bank UK plc [2023] UKSC 25.

As an informal outcome could not be reached this complaint has been passed to me to decide.

### **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 H 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 June-July 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

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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.

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 customers' accounts and scrutinise transactions.

- 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 June-July 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

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

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 June-July 2022, Revolut should in any event have taken these steps.

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

The first payments Mr H made in relation to the scam were not of such a significant value that I would have expected them to cause Revolut concern that would prompt it to intervene. However, when Mr H was making payment 5 he was making a second payment on the same day totalling more than £8,000. Considering the size of the payment, and that it was not usual compared to Mr H's normal spend, I think this should have caused Revolut to have concerns and it should have intervened.

*What did Revolut do to warn Mr H?*

Revolut did not intervene when any of the payments were made from Mr H's account, and it didn't provide any warnings.

*What kind of warning should Revolut have provided?*

As I've explained above, I think Revolut should have intervened when Mr H made payment 5. This was the second payment made in the same day related to cryptocurrency and the total amount sent that day was more than £8,000, which was not in keeping with how Mr H normally operated his account.

Having thought carefully about the risk Payment 5 presented, 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 H's account. I think it should have done this by, for example, directing Mr H 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 H suffered from payment 5?*

There is some evidence that Mr H may have been guided with what to say had Revolut intervened in the payments he was making. Mr H was told to say he was moving money to his own account and that he had bought an antique recently. But I don't think there is enough to say that Mr H would have given these reasons if he was questioned by Revolut.

Mr H was clearly making payments in relation to cryptocurrency and Revolut would have been aware of this had it stepped in. So, the relatively weak and non-detailed backstory Mr H had been given would unlikely have held together in any event.

Revolut has also said that Mr H's own family had warned him that he was likely being scammed, but again it isn't clear what warnings were given by Mr H's family and it appears that Mr H was warned in general that his family view was that all investments of this type was likely to be risky. I can't see that any specific and detailed warnings were given to Mr H.

Overall, I think that had Revolut asked Mr H specific questions, designed to uncover what the payments were in relation to, it is likely it would have uncovered that Mr H was making payments in relation to an investment that he had found online and had not yet made a withdrawal from. It would likely also have found that Mr H had downloaded remote access software.

As the above were common features of scams Revolut would have been aware of at the time I think it's most likely that the scam would have been uncovered and any further loss from payment 5 onwards would have been prevented.

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

In reaching my decision about what is fair and reasonable, I have taken into account that the payments Mr H made from his Revolut account were to purchase cryptocurrency, and it took further steps before the money was lost to the fraudsters.

I have carefully considered Revolut's view that in a multi-stage fraud, a complaint should be properly considered only against either the firm that is a) the 'point of loss' – the last point at which the money (or cryptocurrency) remains under the victim's control; or b) the origin of the funds – that is the account in which the funds were prior to the scam commencing. It says it is (in this case and others) merely an intermediate link – being neither the origin of the funds nor the point of loss and it is therefore irrational to hold it responsible for any loss.

In reaching my decision, I have taken into account that the final payment was made to another financial business (a cryptocurrency exchange) and that the payments that funded the scam were made from other accounts at regulated financial businesses.

But as I've set out in some detail above, I think that Revolut still should have recognised that Mr H 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 H 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 H's own account does not alter that fact and I think Revolut can fairly be held responsible for Mr H'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.

I've also considered that Mr H 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 Mr H could instead, or in addition, have sought to complain against those firms. But Mr H 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 H's compensation in circumstances where: he has only complained about one respondent from which he is entitled to recover his 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 H's loss from payment 5.

*Should Mr H 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 I consider to be fair and reasonable in the circumstances of this complaint.

Having considered the matter carefully, I don't think that there should be any deduction from the amount reimbursed.

I have looked at the information provided by both sides. The tactics employed by the fraudsters are common, but nonetheless captivating to anyone unfamiliar with them. And X spent a long time talking and messaging with Mr H building trust with him.

While it is possible to find negative reviews of X from the time Mr H was investing in the scam, positive reviews were also available. As mixed reviews are generally available about most businesses, I don't think that had Mr H carried out further research he would necessarily have thought he was being scammed.

In the chat transcript between Mr H and X it appears X was suggesting Mr H should give different reasons for the payments if he was questioned but I don't have enough to suggest Mr H would have followed X's guidance or sought it further had Revolut intervened as it should have.

In addition, Revolut has said that Mr H was warned by his family that he could be falling victim to a scam, yet he continued to make the payments anyway. I have looked at the messages, but it doesn't appear that Mr H was given any specific guidance as to what made the investment a scam, more that the family thought payments related to crypto in general were likely to be a scam. I don't think this would be enough of a warning to cause Mr H to have concerns.

Overall, I don't think there should be a deduction to the amount reimbursed. Mr H clearly didn't want to lose his money and I don't think his actions can be explained by carelessness.

*Could Revolut have done anything to recover Mr H's money?*

The payments Mr H made in relation to the scam were sent to a genuine business where they were converted into cryptocurrency, before being sent to the scammer. So, Revolut would not have been able to recover the funds.

In addition, I don't consider that a chargeback would have had any prospect of success given there's no dispute that cryptocurrency was provided in exchange for the payments which was then sent in relation to the scam.

### **Putting things right**

To put things right Revolut Ltd should:

- reimburse Mr H for the payments he made in relation to the scam from payment 5 onwards
- add 8% simple interest per year on the amount it pays Mr H from the date of loss to the date the payment is made (less any lawfully deductible tax).

### **My final decision**

I uphold this complaint and require Revolut Ltd to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 14 January 2025.

Terry Woodham  
**Ombudsman**