DRN-4445935

Financial Ombudsman Service

The complaint

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

Mr B is being represented by a claims management company but for ease of reading I'll only refer to Mr B in my 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 March 2023 Mr B was applying for jobs online. He was approached by a third party via a message on his phone in April 2023 about a job opportunity. After speaking with the third party about the potential role, Mr B asked for more information about the company and completed his own research into them. Mr B said he didn't find any negative information about the company online, so he agreed to sign up. He was given an account and username and decided to send various payments totalling almost £12,000 to the company via a genuine crypto exchange.

After unsuccessfully attempting to withdraw his money Mr B realised he had been scammed. He contacted Revolut and asked for his money back. Revolut reviewed the claim but said it hadn't done anything wrong and wasn't able to successfully raise a chargeback here. So, Mr B brought his complaint to this service.

Our investigator felt the complaint should be upheld in part. He said that Revolut should've stopped a £3,114.82 payment on 23 April 2023 and provided a tailored cryptocurrency investment scam warning. But that wouldn't have likely resonated with Mr B in the circumstances. The investigator felt Revolut should've also stopped a £5,000 payment later the same day and provided a human intervention to discuss why Mr B was making that payment. If Revolut had done so the investigator was satisfied that Mr B would've been truthful about the reason why the payment was being made and the scam would've been uncovered. So, Revolut and Mr B should share liability for the two final payments towards this scam and Revolut should add 8% simple interest per year to this amount.
Mr B accepted the investigator's opinion.

Revolut disagreed and asked for an Ombudsman's review. In summary it said that it is bound by contract (terms and conditions), regulations and common law to execute valid payment instructions. It also referred to the Supreme Court's judgment in Philipp v Barclays Bank UK plc which found that Barclays' duty was to execute the payment instruction. So, Revolut said that the investigator has decided the complaint as if Revolut were under a legal obligation to refund Mr B in line with the Contingent Reimbursement Model (CRM code) which Revolut is not a signatory to. And therefore, the opinion is irrational. It added that Mr B has been grossly negligent in falling for this scam so isn't entitled to a refund.

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 the 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.

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 B 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.

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 April 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 April 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

[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.

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.
- The October 2017, BSI Code[3], 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 April 2023 that Revolut should:

- have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams;

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

- 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.

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 April 2023, Revolut should in any event have taken these steps.

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

It isn't in dispute that Mr B 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 April 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 April 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 B made in April 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 the consumer'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 in April 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 B'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 B might be at a heightened risk of fraud that merited its intervention.

By the time Mr B sent £3,114.82 on 23 April 2023 I think there was enough happening here that Revolut should've been suspicious. The payment size increased dramatically from the previous payments to the crypto exchange. And given what Revolut knew about the destination of the payment and the high value, I think that the circumstances should've led Revolut to consider that Mr B 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.

What kind of warning should Revolut have provided?

I've thought carefully about what a proportionate warning in light of the risk presented would be in these circumstances. In doing so, I've taken into account that many payments that look very similar to this one will be entirely genuine. I've given due consideration to Revolut's duty to make payments promptly, as well as what I consider to have been good industry practice at the time this payment was made.

Taking that into account, I think Revolut ought, when Mr B attempted to make the 23 April payment, knowing that the payment was going to a cryptocurrency provider, to have provided a warning (whether automated or in some other form) that was specifically about the risk of cryptocurrency scams, given how prevalent they had become by the end of 2022. In doing so, I recognise that it would be difficult for such a warning to cover off every permutation and variation of cryptocurrency scam, without significantly losing impact.

So, at this point in time, I think that such a warning should have addressed the key risks and features of the most common cryptocurrency scams – cryptocurrency investment scams. The warning Revolut ought fairly and reasonably to have provided should have highlighted, in clear and understandable terms, the key features of common cryptocurrency investment scams, for example referring to: an advertisement on social media, promoted by a celebrity or public figure; an 'account manager', 'broker' or 'trader' acting on their behalf; the use of remote access software and a small initial deposit which quickly increases in value.

I recognise that a warning of that kind could not have covered off all scenarios. But I think it would have been a proportionate way for Revolut to minimise the risk of financial harm to Mr B by covering the key features of scams affecting many customers but not imposing a level of friction disproportionate to the risk the payment presented.

I've thought carefully about whether a specific warning covering off the key features of cryptocurrency investment scams would have likely prevented any further loss in this case. And on the balance of probabilities, I don't think it would have because it wasn't the nature of the scam Mr B was involved with. Because this was a job scam, I'm not satisfied the cryptocurrency scam warning would've more than likely resonated with Mr B at that point in time.

However, when Mr B sent a further £5,000 payment later that same day, I believe Revolut should've stepped in again and asked Mr B to contact it via its in app chat service. I'm satisfied this payment represented a heightened risk of financial harm and Revolut should've therefore taken additional steps before allowing it to debit Mr B's account. The £5,000 payment was significantly higher than any of the other payments Mr B had made to the crypto exchange and it was the sixth payment to the crypto exchange that same day. This should've given Revolut reasonable cause for concern about the increase and frequency of the payments that Mr B was making.

If Revolut had attempted to establish the circumstances surrounding the £5,000 payment, would the scam have come to light and Mr B's loss been prevented?

Overall, I'm satisfied that if Revolut had asked some probing questions of Mr B about why he was making the payment he would've been honest that he was being asked to make the payment in relation to a job and that there was a third party involved in asking him to send the money to the crypto exchange. This would've been a clear red flag for Revolut who would been able to provide a clear warning to Mr B that he was highly likely to be falling victim to a job scam. It would've then been able to provide further information about other customers who had fallen for the same scam.

I've not seen any persuasive evidence that Mr B was told by the scammers to ignore any Revolut warnings or provide a different reason for the payment going to the crypto exchange. As a result, I'm satisfied a clear warning about job scams would've stopped Mr B in his tracks and he wouldn't have continued to make the payment and thus stopping any further losses towards the scam from that point.

<u>Is it fair and reasonable for Revolut to be held responsible for Mr B's loss?</u>

In reaching my decision about what is fair and reasonable, I have taken into account that Mr B paid money from his Revolut account before forwarding it to an account in his own name at the crypto exchange, 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 partly responsible for Mr B's losses from the £5,000 23 April payment, subject to a deduction for Mr B's own contribution towards his loss. 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 B might have been at risk of financial harm from fraud when they made the £5,000 payment on 23 April, 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 B'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 B 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 B has not chosen to do that and ultimately, I cannot compel them to. In those circumstances, I can only make an award against Revolut.

I'm also not persuaded it would be fair to reduce Mr B'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 B's loss from £5,000 payment (subject to a deduction for his own contribution which I will consider below).

Should Mr B share in the responsibility for his loss?

As well as Revolut's obligations I've also thought about whether Mr B should share in the responsibility for his loss. I won't go into detail here – as Mr B accepted the investigator's view, but for completeness I agree with the investigator broadly for the same reasons. My intention is not to further Mr B's distress where he's already been the victim of a cruel scam. But certainly, by the time of the transaction I'm upholding, I think there were signs that things weren't quite right that he could have scrutinised further.

I've also thought about whether Mr B did enough to protect himself from the scam, and, having thought carefully about this, I don't think he did. I think he ought reasonably to have had concerns about the legitimacy of the job offered given the requirement to send funds to acquire the profits he'd supposedly earned – especially as he had only recently sent just over £3,000 before being asked to send a further £5,000 later that same day. I also think receiving an unsolicited job offer – in a field unrelated to his usual field of work – via a mobile messaging service app should've been seen as unusual to Mr B, and so should have led to him looking more deeply into this job he was apparently being offered.

Ultimately Mr B placed a lot of trust in someone he'd not met in person and agreed to increase the amount of money he was willing to send to the scammer without having the money he was told he would receive back.

Because of this, I think it would be fair and reasonable to make a 50% reduction in the award based on contributary negligence in the circumstances of this complaint.

Recovery

I've thought about whether Revolut did enough to attempt to recover the money Mr B 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 B name at the genuine crypto exchange, as Mr B was able to move the money onto the scammers. So, Mr B 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 crypto exchange.

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

Putting things right

Mr B went on to send a further payment of £938.68 on 23 April 2023. So, Revolut should refund £5,938.68 minus a 50% deduction – which equates to a total of £2,969.34. Revolut should also add 8% simple interest per year to that amount from the date of the payments to the date of settlement.

My final decision

My final decision is that I uphold this complaint in part. Revolut Ltd must do the following;

- Refund £2,969.34
- Add 8% simple interest per year to that amount from the date of the payments to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 December 2024.

Mark Dobson
Ombudsman