

The complaint

Mr A complains that Revolut Ltd won't refund the money he lost to a scam.

What happened

The details of this complaint are well known to both parties, so I won't repeat everything again here. However, in brief, Mr A fell victim to a scam in 2022 and lost just over £3,000 from an account he held with a different provider.

In 2023 he was approached by a scammer who I will call "B". B claimed to be a representative for a crypto recovery company. It claimed that it had recovered the money that Mr A lost during the scam and the profits that the scammer had made. This totalled over \$40,000. But B said that Mr A would have to pay fees to establish his identity and his liquidity before the funds would be released to him.

Mr A made the following payments to B.

Transaction Number	Date	Amount	Type of payment
1	18 May 2023	£996	Card Payment
2	18 May 2023	£994	Card Payment
3	22 May 2023	£992	Card Payment
4	22 May 2023	£994	Card Payment
5	22 May 2023	£1,982	Card Payment
6	22 May 2023	£5,000	Card Payment

Mr A realised he'd been scammed again when he did not receive the promised funds.

I issued a provisional decision on 8 November 2024 in which I said the following;

"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 A 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 May 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.*

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 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).*

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.

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

- *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 May 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*
- *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 May 2023, Revolut should in any event have taken these steps.

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

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

Whilst I have set out in detail in this decision the circumstances which led Mr A to make the payments using his Revolut account and the process by which that money ultimately fell into the hands of the fraudster, I am mindful that, at that time, Revolut had much less information available to it upon which to discern whether any of the payments presented an increased risk that Mr A might be the victim of a scam.

Firstly, I don't think that Revolut would have had any reason to intervene in the first four payment that was made to the crypto exchange - mainly due to their size and that the first two were made 4 days prior to the second two.

I think by payment 5 a pattern was emerging which was indicative of someone who was being scammed. Payment 5 was clearly being made to a cryptocurrency exchange it was the third payment made in the same day and whilst the preceding payments were small this one was larger and multiple payments made to a cryptocurrency exchange on the same day is commonly a sign that someone is potentially being scammed. So, this should really have made Revolut aware that Mr A was at a heightened risk of financial harm.

To be clear, I do not suggest that Revolut should provide a warning for every payment made for cryptocurrency. Instead, as I've explained, I think it was a combination of the characteristics of this payment (combined with those which came before it, and the fact the payment went to a cryptocurrency provider) which ought to have prompted a warning.

But I don't think a warning would have stopped the scam at this moment in time and I say this because a general crypto warning would not have likely covered the features of a recovery scam which is what was happening to Mr A at this point.

So, I don't think that it would have resonated enough with Mr A to have prevented him from sending funds to the scammer especially as he thought he was not just recovering the money he lost from his previous scam but that he was able to reclaim over ten times the amount that the lost.

However, when the payments continued, I think that Revolut should have intervened again during payment 6. Having thought carefully about the risk Payment 6 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 A's account. I think it should have done this by, for example, directing Mr A to its in-app chat to discuss the payment further.

What did Revolut do to warn consumer?

- *My understanding is that no warnings were provided by Revolut.*

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.

If Revolut had attempted to establish the circumstances surrounding Payment 6, would the scam have come to light and Mr A's loss been prevented?

In this instance had Revolut asked for more context about the payment that Mr A was trying to make I think that they would have discovered that Mr A had been approached out of the blue and been told that he could recover money that he had lost as part of a previous scam by paying additional funds. He had been given help to open his cryptocurrency wallet and had allowed B to have remote access to his computer.

I think that Revolut would therefore have been able to quickly identify that this had all the hallmarks of a recovery scam and they would have been able to tell Mr A that it was likely that he was being scammed. I think that Mr A would have not gone ahead with this payment had he been told this.

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

In reaching my decision about what is fair and reasonable, I have taken into account that Mr A purchased cryptocurrency which credited an e-wallet held in his own name, rather than making a payment directly to the fraudsters. So, he remained in control of his money after he made the payments from his Revolut account, 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 based in another country) 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 consumer might have been at risk of financial harm from fraud when they made payment 6, 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 consumer 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 consumer's own account does not alter that fact and I think Revolut can fairly be held responsible for consumer'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 consumer 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 consumer could instead, or in addition, have sought to complain against those firms. But consumer 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 consumer'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 consumer's loss from payment 6 (subject to a deduction for consumer's own contribution which I will consider below).

Should consumer bear any responsibility for their losses?

I've thought about whether Mr A should bear any responsibility for his loss connected. In doing so, I've considered what the law says about contributory negligence, as well as what I consider to be fair and reasonable in all of the circumstances of this complaint.

I recognise that there were relatively sophisticated aspects to this scam, the e-mails from the scammer looked legitimate and I understand scams like this can be very persuasive.

But I consider that after falling victim to the first scam Mr A ought reasonably to have been particularly cautious about paying any form of advance fee to recover his funds.

The premise of the recovery scam isn't believable in that B told Mr A it had traced his funds and could recover them. I'm uncertain how it would be possible to trace funds sent to cryptocurrency wallets and recover them in this way. And the explanation that the funds had gone up in value by over tenfold, so Mr A had to pay more into cryptocurrency wallets to recover his money isn't credible and ought reasonably to have led Mr A to have serious concerns.

Even if it was possible to locate and return funds paid to cryptocurrency wallets, paying more to return funds, and particularly the kind of sums Mr A was asked to pay, doesn't sound logical. So, I've concluded, on balance, that it would be fair to reduce the amount Revolut pays Mr A because of his role in what happened. Weighing the fault that I've found on both sides, I think a fair deduction is 50%.

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

The payments were made by card to a cryptocurrency provider. Mr A sent that cryptocurrency to the fraudsters. 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 the cryptocurrency exchange provided cryptocurrency to Mr A, which he subsequently sent to the fraudsters. So, I don't think Revolut should have done anything more to try and recover Mr A's money."

Neither party provided any new points in response to my provisional decision by the deadline provided.

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 reviewed everything, as neither party has provided any new information, I see no reason to reach a different outcome to the one I reached in my provisional decision.

So in summary, I think that Revolut should have intervened with a human intervention during payment 6 and this would have stopped the scam. I also think that Mr A is partially responsible for his own loss. Finally, I did not think that Revolut could have recovered the funds via other means.

Putting things right

To resolve this complaint Revolut Ltd should:

- Refund payment 6, less a deduction of 50% in recognition of Mr A's own contributory negligence towards his loss.
- Pay 8% simple interest per year on this amount, calculated from the date of loss until the date of settlement, minus any applicable tax.

My final decision

Because of the reasons given above and in my provisional decision, I uphold this complaint in part and require Revolut Ltd to put things right in the way I've set out above, in full and final settlement of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 25 December 2024.

Charlie Newton
Ombudsman