

## The complaint

Mr K, who is represented, is unhappy that Revolut Ltd won't reimburse him funds he lost after falling victim to a job fraud.

## What happened

As the circumstances of this complaint are well-known to both parties, I've summarised them briefly below.

Mr K received a message on a well-known messaging platform purporting to be from a recruitment agency, acting on behalf of a company, offering an employment opportunity. Mr K enquired further and was provided a job description which set out that he'd be responsible for carrying out tasks online and paid commission for each he had successfully completed.

Mr K accepted the position and began carrying out the tasks as instructed. In order to complete these tasks, Mr K was required to make deposits into a cryptocurrency wallet and send these on to a third-party account. Mr K obtained this cryptocurrency by paying several third-party accounts via peer-to-peer cryptocurrency purchases. These payments were made from Mr K's Revolut account over the course of four days and totalled £5,650.65. These payments were as follows:

01.08.2023 – 21:03 – payee 1	£20
03.08.2023 – 20:17 – payee 1	£400
03.08.2023 – 20:59 – payee 2	£300
04.08.2023 – 19:01 – payee 3	£450 + £3.15 fee
04.08.2023 – 21:02 – payee 2	£450 + £4.50 fee
04.08.2023 – 21:03 – payee 2	£450 + £4.50 fee
04.08.2023 – 22:39 – payee 4	£500 + £8 fee
04.08.2023 – 22:45 – payee 4	£1,500 + £29 fee
04.08.2023 – 22:53 – payee 4	£1,500 + £31.50 fee

Once Mr K attempted to withdraw funds from his account, but wasn't able to, he realised he'd been the victim of fraud and reported the matter to Revolut.

Revolut looked into Mr K's complaint but didn't offer to reimburse the funds lost. It said that the payments were processed in line with the customer's instructions, and it did present low friction screen warnings as part of the payment process warning Mr K about the possibility of

the payments being a fraud.

Mr K was unhappy with the outcome of his complaint, so he brought it to our service for an independent review. An Investigator considered the evidence provided by both parties but didn't recommend the complaint be upheld. They concluded that the payments made as part of the fraud weren't significantly out of character to warrant any further intervention than those already provided by Revolut.

Mr K, through his representative, didn't agree with the conclusions reached by the Investigator, so the matter was passed to me for a decision to be made.

On 28 November 2024 I issued provisional findings to both parties setting out what I was minded to conclude. And both parties were given until 12 December 2024 to provide any additional comments or evidence before reaching my final decision. The provisional findings were as follows:

*"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.*

*In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.*

*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 K modified the starting position described in Philipp, by 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".*

*So Revolut was required by the implied terms of its contract with Mr K and the Payment Services Regulations to carry out their instructions promptly, except in the circumstances set*

out in its contract, which included where regulatory requirements meant it needed to carry out further checks.

Whether or not Revolut was required to refuse or delay a payment for one of the reasons set out in its contract, the basic implied requirement to carry out an instruction promptly did not in any event mean Revolut was required to carry out the payments immediately<sup>1</sup>. Revolut could comply with the requirement to carry out payments promptly while still giving fraud warnings, or making further enquiries, prior to making the payment.

And, I am satisfied that, taking into account longstanding regulatory expectations and requirements and what I consider to have been good industry practice at the time, Revolut should in August 2023 fairly and reasonably 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 (irrespective of whether it was also required by the express terms of its contract to do so).

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 do in fact seek to take those steps, often by:

- using algorithms to identify transactions presenting an increased risk of fraud;<sup>2</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.

In reaching my conclusions about what Revolut ought fairly and reasonably to have done, 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).
- 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

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<sup>1</sup> The Payment Services Regulation 2017 Reg. 86 states that “the payer’s payment service provider must ensure that the amount of the payment transaction is credited to the payee’s payment service provider’s account **by the end of the business day following the time of receipt of the payment order**” (emphasis added).

<sup>2</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/>

*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<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).*
- *Since 31 July 2023, under the FCA's Consumer Duty<sup>4</sup>, regulated firms (like Revolut) must act to deliver good outcomes for customers (Principle 12) and must avoid causing foreseeable harm to retail customers (PRIN 2A.2.8R). Avoiding foreseeable harm includes ensuring all aspects of the design, terms, marketing, sale of and support for its products avoid causing foreseeable harm (PRIN 2A.2.10G). One example of foreseeable harm given by the FCA in its final non-handbook guidance on the application of the duty was "consumers becoming victims to scams relating to their financial products for example, due to a firm's inadequate systems to detect/prevent scams or inadequate processes to design, test, tailor and monitor the effectiveness of scam warning messages presented to customers"<sup>5</sup>.*

*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 August 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;*
- *have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so;*
- *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).*

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

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

<sup>4</sup> Prior to the Consumer Duty, FCA regulated firms were required to "pay due regard to the interests of its customers and treat them fairly." (FCA Principle for Businesses 6). As from 31 July 2023 the Consumer Duty applies to all open products and services.

<sup>5</sup> The Consumer Duty Finalised Guidance FG 22/5 (Paragraph 5.23)

*Mr K's account was a well-established one, set up circa two years prior to the fraud payments. Having looked at Mr K's account history, it is predominantly used for low value card payments and withdrawals.*

*Over the course of two years, I can only see three transfers were made from Mr K's account. Two near to the date the account was opened, and one several months prior to the fraud payments; the highest being around £400. I therefore find the activity surrounding the fraud payments to be suspicious in nature, with multiple payments being made to three new payees over the course of three days – with six of those within one day.*

*Furthermore, Revolut has provided evidence to our service that the payment reason provided for payments 3 and 4 above was 'Paying Revolut'. Since our Investigator issued their findings, I've asked Revolut if these payments were made to Revolut accounts. Unfortunately, despite several attempts to chase this information, Revolut has failed to respond. I therefore cannot rule out the possibility that Mr K was paying an account not associated with Revolut in each instance.*

*Taking this into account, I find that Revolut ought to have intervened from payment 3. Payment 1 and 2 were for relatively small values and would have appeared in line with Mr K's normal account usage. But payment 3 not only appeared outside the normal scope of his usual payment behaviour, but provided conflicting information as to the payment purpose and destination of those funds. In line with the principles set out in the Consumer Duty, and all the considerations I've set out above, Revolut ought to have directed Mr K to speak with it before processing the payment. Or, at the very least, drilled the payment purpose down even further to understand what he was making the payment for more specifically.*

*As this type of fraud is—and was at the time—a fairly common one, I find it likely Revolut would have uncovered the true reason Mr K was making the payment: as he'd not been coached during the payment process by the fraudster. And this should have prompted it to deliver dynamic and effective warnings around this type of fraud. I have seen no evidence to suggest Mr K would not have heeded these warnings and likely would have discontinued the payments to the fraudster once he was made aware of this common fraud type.*

*Revolut did provide generic warnings as part of the payment process, but these weren't relevant or impactful to Mr K's specific circumstances.*

#### *Should Mr K bear some liability for his loss?*

*Mr K was introduced to the fraud via an unsolicited message on a messaging application. This in its own right ought to have put Mr K on alert. He'd not approached the company seeking employment and there was no way of verifying with whom he was speaking.*

*I do understand that Mr K was persuaded by the professional nature in which the fraudster conducted themselves, and that he was given access to professional looking online portal that gave an air of legitimacy to the employment proposal. However, he wasn't provided with any employment contract or terms, nor does it appear he carried out any independent research on the business he was purportedly speaking with.*

*I have also considered the messages Mr K has provided our service where he spoke with the fraudster before committing to the job opportunity. Within these messages, Mr K specifically asks the fraudster on two occasions how he can be reassured that it was not a fraud. This clearly indicates he was concerned about the potential risk of the opportunity being fraud, yet he merely took to the reassurances of the fraudster rather than satisfying himself through additional checks that he was dealing with a legitimate opportunity.*

*Finally, it's important to consider that the requests being made of Mr K departs from the usual employee-employer relationship. Mr K was being asked to make payments to the business he was purportedly working for, which a reasonable person would expect to be the reverse. I understand Mr K was provided an explanation for why he'd need to make payments, but I don't find this to have been reasonable where he'd already carried out the tasks expected of him, yet was being asked to make payments rather than being paid for them.*

*Overall, I'm satisfied Mr K should share liability for his loss.'*

As the deadline has now passed for both parties to respond, I'm now in a position to issue my final 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.

Mr K, via his representative, accepted the findings I set out in my provisional decision. Revolut didn't respond to my findings, but it did provide information I had requested before reaching them.

Revolut has confirmed in their evidence submission that Mr K selected 'Paying Revolut' when making payment 3. It has also confirmed that the payment wasn't being made to a Revolut account: it was in fact being paid to an international bank account.

The information Revolut has provided reinforces the findings I have reached in my provisional decision. And as Revolut hasn't provided any further evidence or comment for me to consider, I don't intend to depart from the findings reached in my provisional decision.

### **Putting things right**

Revolut should now reimburse Mr K 50% of his loss from payment 3, including any fees incurred as a result of those payments. It should also pay Mr K 8% simple annual interest on these payments from the date they were made to the date of settlement. This is to reflect the deprivation of funds Mr K has suffered since Revolut ought to have intervened.

### **My final decision**

For the reasons I've given above, I uphold this complaint and direct Revolut Ltd to:

- Reimburse Mr K 50% of his loss from payment 3 onward (including fees).
- Pay Mr K 8% simple annual interest on these reimbursements from the date of each payment to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 10 January 2025.

Stephen Westlake  
**Ombudsman**