

## The complaint

Mr R is unhappy Revolut Ltd (“Revolut”) won’t refund several transactions made using his debit card, that Mr R says he didn’t authorise.

## What happened

On 6 June 2020 between 02:50am and 05:11am there were eight transactions made using Mr R’s debit card, held with Revolut. The transactions took place in Romania where Mr R was living. The transactions totalled 949 RON (Romanian Lei) including fees. This equates to around £170, based on today’s general exchange rate.

Mr R has explained he woke up on the morning of 6 June 2020 and realised his wallet and passport were missing.

Mr R has explained that he suffers from PTSD and panic attacks for which he takes medication. As a result, Mr R explained that his memory is not so good, and it affects his day to day life as he is unable to remember things. Because of this, Mr R within his wallet, kept a piece of paper containing personal details and this included his PIN for his Revolut card.

Mr R says he had had an argument with his now ex-partner on the evening before 6 June 2020 and had gone to sleep. Mr R believes he had left his wallet in his bedside draw. Mr R says his ex-partner had taken his wallet and passport and had also left him a note saying ‘bye’.

Mr R checked his Revolut account and saw there were multiple transactions that he hadn’t authorised. Mr R says it looked like his partner had a night out at his expense. Mr R logged the matter with the Romanian Police authorities but didn’t receive any paperwork.

Mr R contacted Revolut through its online messaging service on 6 June 2020 at 10:40am explaining what had happened, to cancel / stop the card and to report the transactions he hadn’t authorised.

Mr R asked Revolut for the transactions to be refunded. Revolut initially explained that it couldn’t see any signs of an ‘account takeover’ and that his account had only been accessed by his ‘device’. Revolut said Mr R should reach out to his partner and try and resolve the matter.

Mr R explained that he never said his account had been taken over and that his wallet with his bank card had been taken and used without his permission. Mr R pointed to the transactions in dispute between 02:50am and 05:11am which were for restaurants and an ATM machine.

Revolut then explained that it wouldn’t refund Mr R if he had intentionally or carelessly failed to keep his security details or Revolut card safe.

Mr R said that he hadn’t given his PIN to his ex-partner and that she most likely knew his PIN as she had been his partner.

On 23 June 2020 Revolut issued its final response letter to Mr R. It explained that while the transactions were performed without Mr R's permission, his card as well as the security details were in the possession of his ex-partner. So it considered as Mr R had failed to keep his PIN safe in line with the terms and conditions of the account, he was liable for the disputed transactions.

Unhappy with Revolut's response, Mr R referred the matter to our service.

While the complaint was with our service, Revolut offered Mr R three months use of its 'Premium' service (which equates to £20.97). This was to recognise the inconvenience and waiting times Mr R had experienced. Mr R rejected this offer.

One of our investigators then looked into the complaint and upheld it. They were satisfied that Mr R hadn't consented to or authorised the transactions. Our investigator also thought that it was more likely than not that Mr R's ex-partner, given they were partners, was aware of Mr R's PIN in any event and wouldn't have needed the written details kept in Mr R's wallet to make the transactions. So they didn't consider the transactions had occurred as a result of Mr R being grossly negligent or failing with intent to comply with the terms and conditions of the account.

Our investigator recommended Revolut refund to Mr R the transactions and the associated fees. They also considered Revolut's service had been poor when Mr R contacted Revolut about the transactions. Because of this they considered Revolut should pay to Mr R an additional £100 for the trouble and upset caused.

Revolut responded disagreeing with the investigator's opinion. It agreed that the transactions were authenticated through the card and PIN and that they were also not authorised by Mr R as the card had been stolen by Mr R's partner at the time.

Revolut said it wasn't aware Mr R had trouble with his memory and was required to write things down. It explained that through the 'mobile application' it offers a number of additional features which Mr R could have used. It pointed to the 'view PIN' facility, which meant a customer didn't need to write their PIN down; a 'location-based' security option which if activated would mean a card payment would fail if it takes place a certain distance from the account holders' phone / device and a 'disable ATM withdrawal' feature – meaning if a card was stolen it couldn't be used for ATM withdrawals.

Revolut considered Mr R hadn't taken steps to ensure the safety of his card and PIN and it remained of the opinion that Mr R should be held liable for the disputed transactions. Revolut considered its offer of £20.97 was a fair way to resolve things.

Our investigator then contacted Mr R about the additional security features, with Mr R explaining that he wasn't aware of them. Mr R kept in contact with the investigator and explained that he had managed to find the features and that some were useful and which he would use going forward. Mr R explained he tried the location-based feature, leaving his phone at home – but found he was still able to use his card up to 15-20 miles away – so didn't think it was very useful.

The investigator then responded to Revolut to say while he acknowledged there were additional security features it didn't change his opinion that Mr R, by not using them, had acted with gross negligence. They remained of the opinion that the complaint should be upheld, and that Mr R simply wouldn't have realised that his partner would steal his wallet and card and knowing his PIN, use the card without his permission.

As the matter hasn't been resolved, it's been passed to me for a 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.

Having done so, I uphold this complaint. I'll explain why.

Before I go on to explain my findings, I can see that our investigator within their view incorrectly recorded the disputed transactions as taking place on 6 July 2020 instead of 6 June 2020. I am aware that both parties know the date the disputed transactions took place – so I wanted to take this opportunity to clarify the error / oversight and confirm the date of the disputed transactions as 6 June 2020.

When considering what's fair and reasonable I am required to take into account; relevant law and regulations; the regulator's rules, guidance and standards; codes of practice; and where appropriate what I consider to have been good industry practice at the relevant time.

Where there is a dispute about what happened, I have to reach my findings on what I think is more likely than not to have happened, based on the balance of probabilities.

The relevant regulations in place at the time are the 'Payment Services Regulations 2017' ("PSR 2017").

PSR 2017 says a payment transaction is regarded as 'authorised' if the payer has given consent to the execution of the payment transaction. And if a payment service user (customer) says they haven't authorised an executed payment – the payment service provider (in this case Revolut) has to prove the payment transaction was authenticated.

Importantly, if it is deemed that a payment transaction hasn't been consented to, it isn't authorised. PSR 2017 goes on to say a payment service provider is required to refund the amount of an unauthorised transaction to the payer (customer) unless the payer has with intent or gross negligence failed to protect or keep safe their security details in accordance with the terms and conditions of the account (these are Regulations 72 and 77(3) of PSR 2017).

In this case, it is not in dispute that the payments were 'authenticated' – as Mr R's card and PIN was used. Revolut also accept that Mr R didn't carry out / consent to the disputed transactions, but it argues Mr R has failed to comply with obligations under the account's terms and conditions and under PSR 2017 – and acted with gross negligence by writing his PIN down.

So the matter at hand for me to consider is whether Mr R, by keeping security details on a piece of paper in his wallet, meant under PSR 2017 that he failed with gross negligence to comply with the terms and conditions of his account which required him to protect his security details.

Our service interprets gross negligence as a very significant degree of carelessness which goes significantly beyond ordinary negligence. So writing a PIN down in a non-disguisable format and keeping it within a wallet or purse where the card is also stored is more often than not considered gross negligence. However I am mindful that Mr R's memory problem was the reason he wrote down various security details as it assisted him on a day to day basis. And I do also acknowledge that Revolut weren't made aware of Mr R's condition and that had it been then it could have made Mr R aware of the various additional security features available.

But for me, what is important, are the circumstances of this particular case. And that is that Mr R's partner at the time – after an argument – decided to leave Mr R, stealing his wallet and passport in the process and then used his card without his consent.

Importantly, in this case, I'm satisfied that it is more likely than not the now ex-partner would have known Mr R's PIN simply from the duration they had been together on a daily basis. Mr R has said that his ex-partner would stand next to him at an ATM or in shops. She was his partner, and it is a normal everyday occurrence for such things to happen. So there was more than enough opportunity for the ex-partner, over time, to become aware of Mr R's PIN.

So while Mr R had the security details written down due to his memory problems, I don't think it is fair or reasonable for Revolut to say that in this case Mr R has acted with gross negligence in not complying with the terms and conditions of the account requiring him to keep his details secure. This is a case where I consider Mr R's PIN was more likely than not already known by Mr R's partner at the time, with Mr R not knowing that he would then be a victim of the theft of his wallet, card and passport by his partner later on down the line. Had Mr R not written down any security details, I am satisfied the theft of the card and the subsequent usage of it would have still occurred due to the unfortunate circumstances of the acrimonious split between Mr R and his partner – from which Mr R did not expect his ex-partner to take the actions she did.

So, after taking everything into consideration, I'm satisfied that Mr R didn't consent to the transactions. And it wouldn't be fair or reasonable for Revolut to refuse a refund of the transactions under the grounds that Mr R had acted with gross negligence by not keeping his security details secure when, in this situation, Mr R was taken advantage of by his then partner stealing his card and using it, as they were already aware of the PIN, without Mr R's consent.

Having looked at the service Mr R received when he contacted Revolut – it falls short of what I would expect. Mr R clearly set out that his card had been stolen by his partner. Revolut first investigated whether the account had been 'taken over' – and considered it hadn't and that Mr R should reach out to his partner and try and resolve the matter. So I can understand why Mr R feels Revolut hadn't listened to him.

There was also seemingly unnecessary delays and confusion on Revolut's part in getting to the heart of what had happened and providing its stance on the matter to Mr R. This no doubt caused Mr R unnecessary inconvenience. So I agree with our investigator's recommendation that Revolut should award Mr R an additional £100 as compensation for the level of service it provided.

### **Putting things right**

For the reasons given above, I uphold Mr R's complaint against Revolut.

I now direct Revolut Ltd to:

- refund the amount of the unauthorised payment transactions along with the associated fees where applicable.
- Pay simple interest on this amount, from the date of the loss to the date of the settlement. The interest rate should be 8% a year. †
- Pay £100 compensation to Mr R for the material distress and inconvenience he experienced.

*† HM Revenue & Customs requires Revolut to take off tax from this interest. Revolut must give Mr R a certificate showing how much tax it's taken off if he asks for one.*

### **My final decision**

For the reasons given above, my final decision is that I uphold this complaint.

Revolut Ltd should calculate and pay compensation as I have set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 28 May 2021.

Matthew Horner  
**Ombudsman**