

The complaint

Mr V complains that Revolut Ltd won't refund payments sent from his account which he didn't make or otherwise authorise.

What happened

The full details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll provide an overview of the key events and focus on giving my reasons for my decision. I would, however, like to reassure both Mr V and Revolut that I've read and considered everything that's been submitted to this office.

- Mr V received a text from someone purporting to be the post office saying that he had missed a delivery and needed to click on a link to rearrange it. Mr V says he was expecting a delivery, so he clicked on the link and entered his card details to pay a re-delivery free believing this was necessary.
- Around a week later, Mr V received a call from a scammer impersonating Revolut's fraud detection department. He was told suspicious transactions had been detected, one of which – a card payment for £25.98 – had been successfully transacted.
- Under the guise of protecting his money, the scammer got Mr V to share a One Time Passcode (OTP) which they claimed had been sent to him by Revolut to initiate the process of closing his account. Mr V realised he'd been scammed when he discovered two card payments – £1900 and £440 – to a cryptocurrency exchange had been made shortly after he shared the OTP.
- Mr V reported the matter to Revolut and it refunded the initial transaction of £25.98, which it deemed valid for a chargeback. But for the remaining two transactions, it said they were made using Apple Pay and as Mr V had enabled the fraudster to set up Apple Pay on their device by sharing the OTP, it considered the transactions authorised and didn't refund or raise a chargeback.
- The matter was then referred to our service and our investigator was satisfied that Mr V didn't authorise the transactions. But they concluded that he'd failed with gross negligence by not keeping his security details safe. The investigator also concluded that Revolut didn't miss an opportunity to prevent Mr V's loss. So, it didn't need to do anything further regarding the two transactions still in dispute.
- Mr V didn't agree and asked for his complaint to be reviewed by an ombudsman.

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 outcome reached by the investigator for these reasons:

- In line with the Payment Services Regulations 2017 (PSRs), broadly speaking, Mr V isn't liable for payments he hasn't authorised, unless he failed with intent or gross negligence to comply with the terms of the account or keep his personalised security details safe. And Mr V is liable for payments he's authorised.
- To consider a payment authorised, the PSRs explain that Mr V must have given his consent to the execution of the payment transaction – and that consent must be in the form, and in accordance with the procedure, agreed between him and Revolut.
- To establish the agreed form and procedure, I've reviewed the terms and conditions that Revolut has referred us to. These don't set out in detail how Mr V consents to making payments using Apple Pay. They simply say that Mr V can make payments using his Revolut Card, which also includes a virtual card added to Apple Pay. So, I've thought about what practical steps are needed to make these payments. It seems Mr V would have needed to use his Apple device and its associated biometrics to make the payments via Apple Pay.
- Here, it's not disputed that the transactions were authenticated correctly. But it wasn't Mr V who used the Apple device to make these disputed payments with the merchant. Instead, it's agreed a fraudster set up Apple Pay on their own device with Mr V's card details and then used it to make the payments. But Mr V didn't consent to these payments being made – I don't think he used the agreed form and procedure to provide his consent to them being made. As such, under the PSRs, these payment transactions are considered unauthorised.
- Mr V could still be held liable for payments he didn't authorise if he failed with intent or gross negligence to comply with the terms of the account or keep his personalised security details safe. I don't find that Mr V intentionally failed to keep his account or security details safe. I say this because he's told us he was sceptical when the fraudster asked him to share the OTP. Mr V initially told them he preferred to call back before proceeding. He's also said he considered messaging Revolut through its in-app chat function. These aren't actions of someone who would intentionally disclose their personalised security details.
- I do, however, consider that Mr V failed with gross negligence to keep his personalised security details safe. From what he's told us, he was aware the OTP that Revolut sent him was for setting up Apple Pay on an Apple device. Indeed, just a week prior he had received the same message (with a different OTP) when he was genuinely setting up Apple Pay on *his* new Apple device. What's more, I've seen the text message containing the OTP as Mr V has forwarded a screenshot. It says, *"Don't share this code with anyone, even if they claim to be from Revolut."*
- I find that there were red flags – the OTP wasn't for initiating the account closure as the fraudster had claimed, and there was a warning not to share it with anyone – and they ought reasonably to have given Mr V cause for concern that his Revolut account was at risk. By his own admission, he was sceptical at various points during the call. In addition to what I've already mentioned, he's told us he moved funds from his 'Vaults' into his main account under the fraudster's instructions, but not before freezing all active cards. But the fraudster told him to unfreeze them, resulting in what he refers to as his "greatest hesitation". Mr V has explained that happened because he understood the implications of someone having access to his card and the Apple Pay OTP code.

- While I fully acknowledge the fraudster had created a sense of panic, it is also clear that Mr V was sufficiently aware of the risks involved in divulging his personalised security credentials. I think most people in that situation would not have gone ahead. But Mr V disregarded an obvious risk by proceeding with the scammer's instructions and that led to the money being taken from his account. On this occasion, I find that Mr V's actions were significantly careless, and so he's liable for the disputed transactions.
- I've also considered Revolut's responsibility to protect customers from financial harm when there's an identifiable risk that they might be subject to fraud or scam. While I recognise that Mr V lost just over £2,300 in two transactions, and I know he feels strongly that they were uncharacteristic for his account activity, I don't consider the transactions were *that* unusual such that I think Revolut ought to have paused them and made further enquiries. Considering Revolut's wider responsibilities as an electronic money institution, I don't think it ought to have regarded the transactions as suspicious or an indication that Mr V might have been at the risk of falling victim to a scam. So, I don't consider it was unreasonable for Revolut to have released the payments.
- I've also thought about Revolut's actions in relation to the recovery of payments *after* it became aware of the situation. As these were debit card transactions, the only avenue here would have been a chargeback. And given the merchant the payments were made to would have provided the service – conversion of money into cryptocurrency – even if Mr V didn't benefit from it, it's unlikely that a chargeback would have been successful.

In summary, I recognise that this will come as a considerable disappointment to Mr V. But in the circumstances, I'm not persuaded that Revolut can fairly or reasonably be held liable for his loss.

My final decision

For the reasons given, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 10 October 2023.

Gagandeep Singh
Ombudsman