

The complaint

Mr C is unhappy that Revolut Ltd won't refund payments he didn't make.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving the reasons for my 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've reached the same outcome as our investigator for these reasons:

- The starting position under the Payment Services Regulations 2017 (PSRs) is that Mr C is liable for authorised payments and Revolut is liable for unauthorised payments.
- To consider a payment authorised, the PSRs explain that Mr C 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. They don't set out in detail how Mr C consents to making payments using Apple or Google Pay, which is the nature of the payments in dispute here. They simply say that he can make payments using his Revolut Card. So I've thought about what practical steps were needed to make these payments. It seems he would've needed to use his device and its associated biometrics with the merchant to make the payments.
- Here, it's agreed fraudsters set up Apple or Google Pay on their own device with Mr C's card details and made the payments. It follows that I'm not satisfied Mr C used the agreed form and procedure to consent to these payments.
- I've considered Revolut's submissions that the payments should be regarded as authorised as Mr C was aware his actions would facilitate payments. But I'm mindful that it's likely fraudsters used Mr C's stolen card details to initiate setting up Apple or Google Pay on their device (unbeknownst to Mr C). And that he's consistently explained he was tricked into sharing the one-time-passcode under the guise it was needed to protect his account from fraud. So I'm not persuaded he understood he'd facilitated payments being made. And, given the deception involved, I don't think it's reasonable to conclude that these circumstances amount to Mr C giving permission for someone else to consent to payments on his behalf.
- Taking this all into account, I consider these disputed payments to be unauthorised, in line with the PSRs. Revolut submit it still shouldn't be held liable because Mr C

didn't meet his obligations under regulation 72 of the PSRs. In summary, this says he must comply with the terms of the account and keep his personalised security details safe.

- But the PSRs also make clear that to hold Mr C liable for unauthorised payments, it's not enough to say Mr C didn't comply with his obligations – instead Revolut must show he has failed to comply with *gross negligence*. (It can also assert that he failed with intent to comply or has acted fraudulently, but it's not been suggested that's the case here.)
- To assess this, I've reflected on the circumstances of the scam. As I've said, Mr C acknowledged he shared a one-time passcode with the fraudster. He's explained he did this because he believed he was genuinely talking with Revolut, and he thought it was part of blocking his card and ultimately protecting his account from fraud.
- Revolut submit he could have done more research online about the phone number – and seen the various negative comments and suggestions of scams. But the test isn't whether Mr C did everything he could have, or ought reasonably to have done. It's whether he acted with *very significant* carelessness to conclude he acted with *gross negligence*. Here, Mr C did look up the number online – and given the various mentions of Revolut, I can see how why he trusted the call was coming from them.
- Moreover, Mr C explained this wasn't his only reason for trusting the caller – they also knew various pieces of his personal information and he was reassured that a message came through from Revolut when he was told to expect it. So I can understand how it all added up in the moment and overall, why he trusted them – I think lots of people would've done in the circumstances.
- I've also considered Revolut's arguments about the content of the message, which said it was to add his card to another device and warned him not to share it, even with someone claiming to be Revolut.
- But in the circumstances – when Mr C trusted the caller and the message came through from Revolut when he expected – I can see how he simply focussed on the code he was instructed to share without dwelling on the warnings. Particularly as he was acting in the heat of the moment and was likely worried, given that he'd been tricked into believing his account had been compromised.
- I've also noted Revolut's points about the education it's shared with Mr C about fraud and scams. But I don't think his failure to recall these in the moment, when he'd been misdirected into thinking there was an urgent, worrying situation, meant he acted with very significant carelessness.
- Taking this all into account – how Mr C was cleverly duped into believing he was talking with Revolut and the concerning situation they presented – I can see how Mr C shared the code. I don't think it meant he fell so far below what a reasonable person would've done to conclude he was grossly negligent.
- It follows that I don't think Mr C can fairly be held liable for these disputed payments and Revolut needs to put things right – by refunding his losses from them alongside interest to compensate him for the time he's been out of pocket.
- Finally, I've noted Revolut has also raised several arguments that I consider to be relevant to authorised payment scams. But, as I've concluded these payments are unauthorised, I don't think it's relevant to address these.

My final decision

For the reasons I've explained, I uphold Mr C's complaint. Revolut Ltd must:

- Pay Mr C the total of the unauthorised payments, less any amount recovered or refunded. I understand this to be £6,050.00.
- Pay 8% simple interest per year on this amount, from the date of the unauthorised payments to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 April 2024.

Emma Szkolar
Ombudsman