

## The complaint

Miss D complains Revolut Ltd (“Revolut”) won’t refund several transactions she disputes to having made from her account.

## What happened

In February 2023, four transactions amounting to £4,020 were sent from Miss D’s account to the same beneficiary. Miss D says she didn’t authorise these payments.

Miss D says her phone was stolen in December 2022 and she reported this to the phone’s network provider and was told it had been ‘blacklisted’. Miss D says two of her external accounts with other banks were fraudulently accessed and funds were transferred from them into her Revolut account. And these funds were then forwarded by a fraudster from her Revolut account.

Miss D says she only discovered this had happened once funds had been moved from her other external accounts. Miss D contacted Revolut the day after the disputed transactions left her account. Miss D later reported the fraud to the police and Revolut investigated her claim.

Revolut didn’t uphold Miss D’s claim, in summary saying she failed to notify it in reasonable time and so failed to secure her security credentials in line with the terms of the account. Unhappy, Miss D complained. Revolut didn’t uphold Miss D’s complaint. In summary, it said:

- Its fraud specialists didn’t find there were any signs of unauthorised login attempts
- The time between when Miss D’s phone was stolen and the disputed transactions taking place was over a month. So Miss D had plenty of time to properly secure her account which she failed to do in line with its terms

Miss D referred her complaint to this service. One of our Investigator’s looked into her complaint, and recommended it be upheld. In short, they found:

- Miss D took reasonable steps to secure her stolen phone upon realising it had been stolen by going into one of the network operator’s retail branches and getting it blacklisted. Miss D also reported the theft to the police
- When Miss D realised unauthorised transactions had been made from her external accounts the same day they occurred, she immediately called the banks to report the issue. Our Investigator was satisfied Miss D didn’t know who the beneficiary of the disputed transactions was
- Revolut say Miss D was grossly negligent as she, as per the terms of the account, “carelessly failed to keep her security details or Revolut card safe”. But as Miss D took reasonable steps to secure her device by immediately getting it blacklisted, she hadn’t been grossly negligent. Miss D believed blacklisting her device meant it couldn’t be used. So it was reasonable for her believe this extended to the apps on

the phone too

- They were satisfied Miss D's phone was stolen and she was later using a newer device. They'd also seen evidence which showed the transactions were made from an IP address abroad. Whilst not conclusive, this strengthens Miss D's testimony that she didn't authorise the transactions
- So, Revolut should refund Miss D the transactions she says she didn't authorise

Miss D agreed with what our Investigator said. But as Revolut hasn't responded, this complaint has now been passed to me to decide.

### Relevant considerations

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

Of particular importance to my decision about what is fair and reasonable in the circumstances of this complaint, are the Payment Services Regulations 2017 (the PSR 2017) which apply to transactions like the ones Mrs M disputes. Among other things the PSR 2017 include the following:

Regulation 67 of the PSR 2017 explains:

67.— (1) A payment transaction is to be regarded as having been authorised by the payer for the purposes of this Part only if the payer has given its consent to —

(a) the execution of the payment transaction; or

(b) the execution of a series of payment transactions of which that payment transaction forms part

Whether a payment transaction has been authorised or not is important because account holders will usually be liable for payments they've authorised and, generally speaking, payment service provider's will be liable for unauthorised payments.

### *Gross negligence*

Whether a customer has acted with "gross negligence" is something that can only be assessed on a case-by-case basis taking into account all the circumstances. The term is not defined in the PSR or in the Payment Services Directive. However, recital 72 of the second Payment Services Directive provides as follows:

"In order to assess possible negligence or gross negligence on the part of the payment service user account should be taken of all of the circumstances. The evidence and degree of alleged negligence should generally be evaluated according to national law. However while the concept of negligence implies a breach of a duty of care, gross negligence should mean more than mere negligence, involving conduct exhibiting a significant degree of carelessness, for example keeping the credentials used to authorise a payment transaction beside the payment instrument in a format that is open and easily detectable by third parties..."

Reflecting this, the FCA, in its document setting out its role under the Payment Services Regulations 2017, says: "... we interpret "gross negligence" to be a higher standard than the

standard of negligence under common law. The customer needs to have shown a very significant degree of carelessness."

Although not specific to this case, the FCA's interpretation is of value as a relevant consideration in the absence of contemporaneous interpretive guidance, and because it informs the meaning of a concept that had been in place for some time in the Banking Code.

Negligence is often referred to as a failure to exercise reasonable care. And, as I have described above, the use of 'gross negligence', rather than mere 'negligence', suggests a lack of care that goes significantly beyond ordinary negligence or carelessness.

So, if I find the disputed transactions were unauthorised, I have to consider whether Miss D's actions fell so far below the standard of a reasonable person that she failed with gross negligence to meet her obligations as a payment service user or to comply with her account's terms and conditions.

### **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 decided to uphold this complaint. I'll explain why.

#### *Did Miss D authorise the payments?*

I'm satisfied from the bank's technical evidence that Miss D's online account was accessed and used in the proper form to make the disputed transactions. So, that means I'm satisfied the transactions were authenticated in line with what the PSR's say. But the PSR's say that is not, on its own, enough to enable Revolut to hold Miss D liable.

So I also need to think about whether the evidence suggests it's more likely than not that Miss D consented to the payments being made. Revolut's response appear to accept that Miss D didn't authorise these payments given it thinks she was grossly negligent.

Having carefully considered what Miss D says happened, and the evidence I've been sent, I'm persuaded Miss D didn't consent to these payments. She's explained that her phone was stolen, and she took reasonable steps by reporting this to the mobile network provider who told her the phone had been blacklisted. I also note that transaction from her external accounts were made from a country abroad and were quickly moved to a beneficiary she doesn't recognise, nor has she sent money to them before.

All the transactions including the one's from her external accounts were made on the type of phone she had stolen too. Though the phone was stolen around a month prior, Miss D also reported the fraud as soon as it happened and explained how this could have happened. So I don't think Miss D had reason to suspect her stolen phone could've been used in this way to commit fraud against her.

I've also considered that Miss D's stolen phone could only be accessed by face recognition and failing that by using a password. Miss D has said - from the evidence I've seen when reporting the matter - that it was a variation of her date of birth. Given its likely a fraudster could've relatively easily obtained such information and worked with permutations of it, I'm persuaded that is how they most likely accessed the stolen phone, and equally changed the face identification on it to commit this fraud.

So after weighing everything up, I'm persuaded Miss D didn't authorise the payments she

disputes.

*Did Miss D fail with intent or gross negligence?*

Revolut say Miss D was grossly negligent in line with the provisions of its terms of account by failing to take measures to secure her account given she didn't tell it her phone had been stolen for a little over a month.

I've carefully considered this point and having done so I don't agree. I've explained above what degree of behaviour meets the standard of gross negligence in relation to deciding this complaint. Miss D immediately got her phone backlisted with the mobile network provider, and I haven't seen that she was told she'd need to contact any financial providers in these circumstances. Miss D say she thought this meant her stolen phone couldn't be used, and I'm persuaded this is a reasonable position to take.

Having said that I accept it would've been prudent of her to do so and doing so would've likely prevented her Revolut account being used to commit fraud against her.

But I don't think she acted with a lack of care that goes significantly beyond ordinary negligence of carelessness. Given she'd backlisted the phone, bought a new one and replaced her apps, I don't think it would have been reasonably obvious to her that she needed to report the loss of the phone to her banking app providers. And I've already said she acted reasonably when thinking her stolen phone couldn't be used after getting it backlisted.

So I'm persuaded Miss D hasn't been grossly negligent.

Given I don't think Miss D likely authorised the disputed transactions and wasn't grossly negligent, Revolut must refund her funds of £4,020.

### **My final decision**

For the reasons above, I uphold this complaint. Revolut Ltd must now refund Miss D £4,020.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 12 February 2024.

Ketan Nagla

**Ombudsman**