

The complaint

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

What happened

- Mr P explained his card details were phished using a link he believed was to reschedule a delivery. Following this, he received a call, using a spoofed Revolut number, from someone claiming to be from its fraud team.
- Mr P said they told him someone was making transactions using his account, which they'd help with. They instructed him to transfer money from his other accounts in case they were targeted too – so Mr P transferred £2,489.24 into his Revolut account.
- Mr P recalled how they asked him to enter a code on his keypad that they'd send him by text in order to verify him, which he did. This code in fact enabled fraudsters to finish setting up Apple Pay on a separate device and make two successful payments: an online B&Q card payment for £2,262.39 and an online payment to Temu for £206.80.
- Having realised money was missing from his account, Mr P disputed the payments with Revolut. It declined to refund him, noting that it considered the payments were authorised.
- Unhappy with Revolut's response, Mr P brought his complaint to our service to investigate.

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:

- I've firstly considered whether Mr P authorised these payments. This is relevant as, in line with the Payment Services Regulations 2017 (PSRs), he would generally be liable for payments he authorised – whereas Revolut would be liable for unauthorised payments.
- The PSRs specify that authorisation depends on whether the payment transactions were authenticated correctly – and whether Mr P consented to them. It's not disputed the payments were authenticated correctly (as in, the correct payment steps were completed). So I've gone on to consider whether he consented to them.
- The PSRs specify how consent is given – it must be in the form, and in accordance with the procedure, agreed between Mr P and Revolut.

- To establish the agreed form and procedure, I've reviewed the relevant terms and conditions. These don't set out in detail how Mr P consents to making payments using Apple Pay, which is the nature of the payments in dispute here. So I've looked at the practical steps that would've been needed to make the payments. It seems he would've needed to use his Apple device and its associated biometrics with the merchant to make them.
- Here, it's accepted it wasn't Mr P who used the Apple device to make these disputed payments. Instead, fraudsters set up Apple Pay on their own device using Mr P's stolen card details and made them. It follows Mr P hasn't used the agreed form and procedure to consent to these payments.
- Revolut argue that the payments should be considered authorised because Mr P shared a one-time passcode (OTP) which was used to set up Apple Pay on the fraudster's device. It adds that when it declined the first transaction, he said he'd made the transaction and confirmed the card would be unblocked on the app.
- I don't think either of these points change the fact that Mr P didn't use the agreed steps to consent to the payments. But I have thought about whether they could mean that he gave permission for a third party (i.e. the fraudsters) to go through the steps for giving consent.
- I've noted that fraudsters stole Mr P's card details using a phishing link. And they tricked him into sharing the OTP under the guise of 'verification'. So, given the deception involved in getting what they needed to make the payments, I don't think I could fairly conclude Mr P gave them permission.
- Despite Mr P not remembering, I accept Revolut's technical evidence that he would've gone through a process on his app to say he made the first transaction and to confirm the card would now be unblocked.
- But I'm not persuaded this meant he was now giving permission for fraudsters to consent to making Apple Pay payments on his behalf. Afterall, it remained they'd only the means to do this because they deceived him.
- Instead, I think it's more likely fraudsters tricked him into completing these steps under the guise that it was necessary to protect his account. This is in keeping with similar scams our service has seen.
- It follows that I consider the payments to be unauthorised. This means the starting position under the PSRs is that Revolut is liable to refund them. There are some circumstances described in the PSRs where that's not the case. I've considered whether those apply here.
- Of particular relevance is regulation 77(4)(d) of the PSRs, which explains that, except where a payer has acted fraudulently, Mr P isn't liable for unauthorised transactions where the payment instrument has been used in connection with a distance contract (other than an excepted contract). In summary, a distance contract means a transaction that is completed without the merchant or consumer being physically present.
- Here, the disputed transactions were to online retail stores. So I think it's reasonable to say they were in connection with distance contracts – and I've not seen anything to suggest either were excepted contracts.

- Revolut also hasn't suggested that Mr P acted fraudulently. So, in line with regulation 77(4)(d), I don't consider he can fairly be held liable for these unauthorised payments. It follows that Revolut needs to put things right – by refunding his losses from these payments alongside interest to compensate him for the time he's been out of pocket.

My final decision

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

- Pay Mr P the total of the unauthorised payments, less any amount recovered or refunded. I understand this to be £2,469.19.
- 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 P to accept or reject my decision before 20 June 2024.

Emma Szkolar
Ombudsman