

## The complaint

Mrs H complains that Revolut Ltd won't refund payments she didn't make or otherwise authorise.

Mrs H is being represented by solicitors in this complaint.

## 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 recap the key points and focus on giving my reasons for my decision:

- In May 2023, Mrs H received a call from someone purporting to be from Revolut. They knew some of her personal as well as account information and said they'd called in relation to suspicious activity on the account.
- Under the pretext of protecting her money from being stolen, the caller obtained a one-time passcode (OTP) from Mrs H. The OTP that she had shared was used to set up Apple Pay on another device which was then used to make several transactions – including one that the caller said they'd managed to reverse.
- Revolut declined to refund Mrs H's loss; it said she had shared the OTP which allowed the payments to be made.
- Our investigator upheld the complaint as they didn't agree with Revolut that Mrs H should be held liable. Revolut disagreed and so the complaint was passed to me to decide.

## 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.

The starting position under the Payment Services Regulations 2017 (PSRs) is that Mrs H is liable for authorised payments and Revolut is liable for unauthorised payments.

To consider a payment authorised, the PSRs explain that Mrs H must have given her consent to the execution of the payment transaction – and that consent must be in the form, and in accordance with the procedure, agreed between her 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 Mrs H consents to making payments using Apple Pay, which is the nature of the payments in dispute here. They simply say that Mrs H can make payments using her Revolut Card. So, I've thought about what practical steps are needed to make payments using Apple Pay. It seems Mrs H would have needed to use her Apple device and its associated biometrics with the merchant to make the payments.

Here, it's not disputed that it wasn't Mrs H who used the Apple device to make these disputed payments with each merchant. Instead, it's agreed fraudsters set up Apple Pay on their own device with Mrs H's card details. It follows that I don't think Mrs H used the agreed form and procedure to consent to these payments.

Revolut argue that, regardless of this, Mrs H authorised these payments with 'apparent authority' by sharing her card details and the OTP – which were used to set up Apple Pay on the fraudster's device.

I don't think this changes the fact that Mrs H didn't use the agreed steps to consent to the payments. But I have thought about whether she gave permission for a third party (i.e., the fraudsters) to go through the steps for giving consent.

Mrs H has consistently said that she didn't share any of her card details with the third party. As for the OTP, initially Mrs H didn't remember sharing it with the third party – that's what she told Revolut at the time of reporting the transactions. She's since told our service that she does recall sharing the OTP, but that she was tricked into doing so. Mrs H explains that in that moment she understood that the code was needed to protect her account from fraud. She thought she was speaking to Revolut and trusted the caller was helping her keep her money safe.

Considering Mrs H's card details were likely stolen, and given the deception involved in handing over the OTP, I don't think it's reasonable to conclude that the circumstances in this case amount to Mrs H giving permission to someone else to consent to payments on her behalf. It follows that I consider the payments to be unauthorised.

Revolut submits that it still shouldn't be held liable under the PSRs because it thinks Mrs H was negligent by not complying with the terms of the account and not keeping information safe.

But the PSRs also make it clear that to hold Mrs H liable for unauthorised payments, it's not enough to say she didn't comply with her obligations – Revolut must show that Mrs H failed to comply with gross negligence. Revolut can also assert that she failed with intent to comply or that she's acted fraudulently, but it's not said that in this case.

Also, of particular relevance is regulation 77(4)(d) of the PSRs, which explains that, except where a payer has acted fraudulently, they aren'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.

Revolut has confirmed that the transactions in dispute were e-commerce or online payments. So, I think it's reasonable to say they were in connection with distance contracts. The Merchant Category Code for two of the three payments is used for membership clubs. I've not seen anything to suggest those payments were excepted contracts. The third payment would be considered as an excepted contract given it was in relation to investment or financial services. So, I've assessed whether Mrs H failed to comply with gross negligence in relation to that payment.

I've reflected on the circumstances that led to Mrs H sharing the OTP with the fraudster. She received a call from someone claiming to be from Revolut, who told her that her account had been compromised. Mrs H recalled they knew some of her personal and account information. In the moment, I can see how she was tricked into thinking that only Revolut would have known that information.

Revolut submit that Mrs H could have done more research online about the phone number – it says the number provided didn't produce any results on an online search it has since carried out. But I note that the phone number Revolut did a search on is not the one Mrs H provided. In any event, the test isn't whether Mrs H did everything she could have, or ought reasonably to have done. It's whether she acted with *very significant* carelessness to conclude she acted with gross negligence. Here, Mrs H says she did look up the number online and asked the caller some questions. Given their correct responses, I can see why in that moment she trusted the call had come from Revolut.

I acknowledge that the message containing the OTP said not to share the code with anyone, even if they claim to be from Revolut. I also recognise that the message states that the code will be used to add Mrs H's card to another Apple Pay device. We asked Mrs H about this, and she's told us that she did read the message at the time. She also added that she felt panicked and can't recall whether she understood what the message meant.

I don't know whether Mrs H properly read the message. I'm mindful that, given the pressure fraudsters typically apply in these types of scams, it's common that victims don't think they have the time to take it in and instead, focus on the number requested. In this case, panicking that she'd lose money if she didn't act quickly – with the added time pressure placed on her – I can see how Mrs H simply focussed on the code she was instructed to share without dwelling on the warnings. Particularly as she was acting in the heat of the moment and was likely worried, given that she'd been tricked into believing her account had been compromised.

This isn't to say Mrs H acted perfectly reasonably. Of course, it's possible to call her actions careless. But, in the convincing and panic-inducing circumstances of this scam, I've not been persuaded that Revolut has shown that Mrs H failed with gross negligence.

It follows that I don't think Mrs H can fairly be held liable for these disputed payments and Revolut needs to put things right by refunding her losses from them alongside interest to compensate her for the time she's been out of pocket.

### **Putting things right**

As I've concluded that Revolut Ltd is liable for the disputed transactions given they were unauthorised, it needs to put things right for Mrs H. Revolut Ltd should:

- Refund the unauthorised transactions, less any amount recovered or already refunded. I understand the amount that needs refunding is £11,750.
- Pay 8% simple interest per year on this amount, from the date of the unauthorised transaction to the date of settlement (less any tax lawfully deductible).

### **My final decision**

For the reasons given, my final decision is that I uphold this complaint. Revolut Ltd needs to put things right for Mrs H as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 7 August 2024.

Gagandeep Singh  
**Ombudsman**

