

The complaint

Mr Z complained because Revolut Ltd refused to refund him for transactions he said he didn't make.

What happened

On 13 April 2024, Mr Z went to a gym he hadn't been to before. He paid a subscription and put his bag into a locker, securing the locker with a lock the gym sold him. His bag contained his card wallet, which had in it his Revolut card, and his cards for a number of other financial organisations.

Mr Z kept his phone with him. He started to receive phone notifications about transactions on his accounts, and he found out that his card wallet had been stolen from his locked locker.

Mr Z started to freeze his accounts using his phone, but the thieves had made transactions from his Revolut account. These were for £1,099 to buy a phone from a nearby retailer, and two £250 cash withdrawals. They were made within a few minutes between 19.07 and 19.12. The thieves also took money from Mr Z's account with another financial organisation, and they also used another card to check his available balance on a third account.

Mr Z contacted Revolut by chat. He reported the theft, and said he wanted to check whether the card had been successfully frozen, if he'd get a new card, and most important if he'd get a refund.

It was over three hours before a live person from Revolut picked up Mr Z's chat. It rejected his claim for a refund, saying it had found no trace of fraud on his account. It said that Mr Z's account activity around the time of the transaction suggested he was familiar with the charges. It told him the decision was final, and that the chargeback couldn't be disputed further because the card and PIN had been used for the transactions. It said that if he wasn't satisfied he could contact the police. Mr Z had already contacted the police and reported it to Action Fraud, and he told Revolut that the PIN hadn't been with the card.

But Revolut didn't change its mind. In its final response letter on 18 April, it referred to the fraudulent transactions as a scam, and said that it had raised chargebacks on 13 April to recover the losses. It explained that chargebacks are governed by a set of rules set by the card schemes. And as the card and PIN had been used, the chargeback scheme rules meant that there couldn't be a valid chargeback. Revolut also told Mr Z that its terms and conditions said that it wouldn't refund a customer who gave someone their PIN.

Mr Z wasn't satisfied and contacted this service. He told us what had happened, and he also sent in lots of other evidence. This showed that the other financial organisation where there's been a fraudulent transaction had already refunded him. Also, the evidence showed he'd reported it to the police and Action Fraud, and that it had been the first time he'd been to that gym. He'd also since been to the retailer who sold the phone to the thief, which had agreed to pass on CCTV to the police. He also sent proof that he'd bought the lock for his locker at the gym using one of his other cards. And he sent proof that he'd ordered several new cards that evening, including his driving licence.

Mr Z also told our investigator that the PINs for the various cards were all different, and were the ones he'd originally had sent to him and he hadn't changed them to anything that was personal, or to a simple number. He said he hadn't shared them with anyone. He said he'd lost hours on chats, reporting the fraudulent transactions, contacting the police, and he wouldn't have done all this if he hadn't been genuine.

Revolut told the investigator that it considered the reimbursement codes and rules didn't apply to it. It said Revolut hadn't signed up to the Contingent Reimbursement Model (CRM) code, and the proposed mandatory reimbursement rules hadn't yet come into force. So it said it shouldn't have to refund Mr Z.

Our investigator upheld Mr Z's complaint. In view of the steps Mr Z had taken and the evidence he'd provided, the investigator accepted that Mr Z's cards had been stolen from the secure locker without his knowledge or permission. The investigator went on to look at how the three disputed Revolut transactions had taken place. They'd all been authenticated using the chip in Mr Z's genuine card, and the correct PIN.

The investigator considered how the thief had been able to find out the PIN for Mr Z's Revolut card. Mr Z had made a transaction the day before, but he'd been abroad at the time, so it was unlikely anyone could have seen Mr Z enter his PIN then. Mr Z had said the PIN wasn't written down anywhere. His internet banking details had been stored on his phone, and he could access the card PINs from the banking apps. But Mr Z's phone hadn't been stolen. So the investigator thought it was most likely that Mr Z's PINs had been written down in the card wallet. But the investigator didn't consider that Mr Z had acted carelessly or with gross negligence, because he'd bought a lock for the gym locker to protect his possessions, and had put the card wallet in the locked locker. The investigator thought that was as much as any reasonable person could be expected to do.

Revolut didn't accept this. It said that failing to keep the security details of the card is considered grossly negligent because potentially writing down the PIN is a reckless act that enabled the fraud to happen. If the PIN hadn't been written down, the third party would not have been able to complete the payments, whether the card had been in a locker or not.

Revolut asked for an ombudsman's 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.

My provisional findings

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision.

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

What the relevant Regulations and Codes say

- *Payment Services Regulations 2017*

In the provisional decision, I explained that there are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the payment services provider (here, Revolut) is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. Revolut didn't suggest that Mr Z might have authorised the disputed transactions himself. Instead, it argued that there couldn't be a valid chargeback, and also that Mr Z was grossly negligent in not keeping his PIN secure. I've considered these arguments below.

- *Contingent Reimbursement Model (CRM) code and mandatory reimbursement rules*

Revolut also argued that it hasn't signed up to the Contingent Reimbursement Model (CRM) code. The CRM code aims to provide customers with more protection against Authorised Push Payments (APPs). Authorised scams involve consumers being tricked into making payments, which benefit the scammer. The disputed transactions on Mr Z's account weren't APPs and in any event the CRM Code doesn't apply to card payments. They resulted from a theft, not from Mr Z being tricked into making the payments himself. So it's irrelevant to this case whether or not Revolut had signed up to the CRM code.

Similarly, Revolut's argument that proposed mandatory reimbursement rules hadn't yet come into force, is not applicable. Those rules also refer to APP scams, and Mr Z's case isn't about APP scams, even though Revolut mistakenly referred to the payments as scams in its final response letter. Scams are where the customer is tricked into making a payment themselves, or is tricked into giving information to a scammer who then uses it to defraud the customer. That's not what happened here. where Mr Z's cards were stolen from a locked locker, and used by the thief.

- *Chargeback schemes*

Some financial organisations choose to use chargebacks for disputed transactions. And it's accurate that chargebacks run according to rules set out by the card scheme, not by the payment service provider (here, Revolut). But chargebacks aren't a full substitute for all of a payment services provider's responsibilities under the Payment Services Regulations 2017. In other words, what matters here is still the key issue of whether or not Mr Z authorised the disputed payments. Saying that a chargeback wouldn't have worked, isn't enough to meet Revolut's responsibilities under the Payment Services Regulations 2017.

Who is liable for the disputed payments in Mr Z's complaint?

Taking account of the Regulations, Codes, and scheme rules above, I considered whether Mr Z, or Revolut, is liable for the disputed payments. Revolut hadn't argued that Mr Z authorised the disputed payments himself. Nor did I consider it was likely that he did. The actions Mr Z took, cancelling multiple cards with multiple providers, and his driving licence, going to the police, and other activities which he evidenced to us, didn't tally with someone who carried out the disputed transactions himself.

As I didn't consider Mr Z carried out the disputed transactions himself, this left the puzzle of how the thief was able to obtain the PINs. As I've set out above, the thief couldn't have "shoulder-surfed" Mr Z by watching him enter his PIN at a previous transaction. His previous transaction was abroad, and before that it had been a couple of months since Mr Z had last used his Revolut card. It's just not probable that anyone looking over his shoulder abroad would have followed him to the UK and to the same gym.

Nor did I think the thief could have guessed the PIN. There are 10,000 possible combinations of a four-digit PIN, and the PIN was correctly entered first time for the disputed transactions.

This just left the possibility that Mr Z had indeed written down his PIN with his cards. I recognised that he said he hadn't, but I couldn't see any other explanation. So I considered whether writing down his PIN and leaving it with his cards in a wallet in a locked gym locker, counted as gross negligence by Mr Z and would mean he doesn't get a refund.

Regulation 77 (3) of the Payment Services Regulations 2017 says:

'The payer is liable for all losses incurred in respect of an unauthorised payment transaction where the payer –

...

(b) has with intent or gross negligence failed to comply with regulation 72' [Regulation 72 deals with the obligations of the customer in keeping payment instruments and personal security credentials secure].

Gross negligence" isn't specifically defined in the regulations, but there have been legal cases about what constitutes gross negligence in this context. Gross negligence involves conduct exhibiting a significant degree of carelessness. The Regulator, the Financial Conduct Authority (FCA) said it is *'a very significant level'* and one of the leading legal cases said that it has to be serious disregard of risk.

So it is a high bar to be counted as Gross Negligence. Here, it seemed most likely to me that Mr Z did write down his PINs with his cards. But as he kept his cards in a wallet in a bag which he put into a locked locker, I didn't consider this action reached the threshold to be counted as Gross Negligence. This meant that as Mr Z didn't authorise the three disputed transactions, Revolut is liable for them, not Mr Z.

Compensation for distress and inconvenience

I went on to consider the service which Revolut provided for Mr Z, and I considered whether or not it should pay him compensation for distress and inconvenience.

It was clear that Revolut provided Mr Z with very poor service. As I've set out above, Revolut didn't respond with a live agent for over 3 hours, when Mr Z had got in touch to notify Revolut of the theft and fraud, and to ask for help. I found that this was very poor. Any customer who suffered fraud would be upset and worried, and having to wait for a very long time like this would have significantly increased the anxiety.

Revolut also rejected Mr Z's claim using the basis of chargeback scheme rules. As I've set out above, this didn't meet the requirements of the Payment Services Regulations, and the rejection of Mr Z's claim on these grounds would also have increased his distress and inconvenience.

So I considered that Revolut should, in addition to the refunds and interest, pay Mr Z £100 compensation for the distress and inconvenience it caused him.

Responses to my provisional decision

Revolut didn't reply by the date for responses to the provisional decision.

Mr Z said he guaranteed that he hadn't written down his PIN numbers anywhere. He said that the bank, police, Action Fraud and his service were confident that the PIN couldn't be obtained from anywhere apart from through the card holder. But he knew he wasn't lying, so it was clear to him that there must be ways for fraudsters to bypass this. He'd looked online and had found several similar cases, so he felt sure the PIN could be bypassed somehow. He also said that even if he'd had one PIN number written down, did we believe he'd written

all his PINs down and left them in the wallet, because the fraudsters had used three different PINs for different accounts. Mr Z said that at the moment he wasn't keeping any funds in Revolut at all.

What I've decided and why

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

It's clear from Mr Z's response that he feels very strongly about the fact that I, and other organisations he's contacted in the course of this fraud, thought it was most likely he'd written down his PIN.

I understand why he's upset. The trouble is that it's hard to think how else the thief could have known the number. The computer records show that the genuine card, and the correct PIN, were used to make the three disputed transactions.

The important point is that I believe Mr Z is telling the truth when he says he didn't carry out the transactions himself. This would be the obvious other way in which the real card and correct PIN were entered. But I don't believe he fraudulently made the transactions himself then tried to claim the money from Revolut, for the reasons set out above. And I'm not aware of any way in which a fraudster can bypass the PIN but it still be recorded on the financial organisation's computer that the correct PIN had been entered.

I explored other possibilities, such as "shoulder surfing," in the provisional decision, but I discounted them for the reasons set out above. It's theoretically possible that Mr R disclosed necessary information to the new gym when signing up – perhaps date of birth etc – which he might also have used for the PIN, thus accidentally disclosing the PIN. But that assumes both that the gym's admin was dishonest, and that Mr R used an insecure PIN like date of birth, neither of which I can know.

Ultimately, however, the test for me to consider isn't how a fraudster could have obtained Mr Z's PIN. What matters is whether he did or didn't authorise the transactions himself. As I consider it's most likely that it was a thief who authorised the disputed transactions, Mr Z's complaint is successful and Revolut has to refund him.

My final decision

My final decision is that I uphold this complaint.

I order Revolut Ltd to pay Mr Z:

- £1,599 as a refund for the three disputed transactions for £1,099, £250 and £250;
and
- Interest at 8% on this figure from 13 April 2024 to the date of payment; and
- £100 compensation for the distress and inconvenience its poor service caused Mr Z.

If Revolut deducts tax from the interest on the award, it should provide Mr Z with a tax deduction certificate to show how much it has deducted, in order to allow Mr Z to reclaim the tax from HMRC if appropriate to his personal circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Z to accept or reject my decision before 17 December 2024.

Belinda Knight
Ombudsman