

The complaint

Mr M complains that Revolut Ltd didn't refund nine transactions he says were made without his authorisation, and that it also used one of his payment cards to top up a negative balance on his account.

What happened

In 2019, Mr M went on a trip overseas. He says that one evening he returned to his hotel late, and, after being dropped off by a taxi, realised he'd lost his phone. The next morning he says he discovered his Revolut card was missing.

After Mr M returned to the United Kingdom and replaced his phone, he says he discovered someone had withdrawn £2,814.67 in cash using his Revolut card – and used the Revolut app on his phone to top up his account with £2,800 from his bank account which was now overdrawn.

Mr M reported this to both Revolut and his bank.

Revolut initially told Mr M it wasn't able to look into this unless he provided a police report. Mr M said the police in the UK wouldn't let him make a report because everything happened overseas. And he said that the police where he'd been staying wouldn't issue police reports by phone – he'd have to go there in person.

Meanwhile, Mr M's bank initiated a chargeback for the top-ups through the relevant card scheme. These chargebacks were successful, so Revolut refunded these top-ups to the card issuer. Mr M doesn't appear to have pursued matters further with Revolut at that time.

But this meant Mr M's account had a negative balance of £2,800. So a few weeks later Revolut topped up Mr M's account using another payment card attached to Mr M's account. Mr M attempted a further chargeback through the issuer of that card, but this was unsuccessful. Mr M now owes £2,800 to the issuer of that card.

Dissatisfied, Mr M referred matters to us.

I issued my provisional findings on this complaint on 10 December 2021.

In my provisional decision, I said that the relevant regulations were the Payment Services Regulations 2017. This set out requirements before a payment transaction can be regarded as having been authorised by the payer and sets out circumstances in which payment service providers are liable for unauthorised transactions.

In particular, the regulations say that where an executed transaction was not authorised by the payer, the payment service provider must refund the amount of the authorised payment to the payer and, where applicable, restore the debited payment account to the state it would have been in, had the unauthorised payment transaction not taken place.

However, the payer could be held liable for all losses where the payer, with intent or gross negligence, failed to use the card in accordance with its terms and conditions or failed to

comply with their obligations in relation to reporting the loss or theft of their card or in keeping their security credentials safe.

With this in mind, I thought the key questions I needed to consider were:

- Whether Mr M authorised the transactions he'd complained about, and
- if Mr M didn't authorise them, should he nevertheless be held liable for them?

I also needed to consider whether Revolut acted fairly in topping up the account to remove the negative balance.

I first thought about what Mr M had said happened. Mr M had told us that during the evening leading up to these transactions he attended a wedding reception. He said that on the way back to his hotel he fell asleep in a taxi, and was dropped a city block away from his hotel at around 2am. He says that after he left the taxi he realised he'd lost his phone. But he still had his wallet. He says it wasn't until the next morning that he realised his Revolut card was missing. And it was only when he returned to the UK and replaced his phone a couple of days later that he realised there'd been transactions on the account. He believes he lost his phone and card while he was in the taxi.

We'd asked Mr M about the security on his phone. He says it was locked by his thumbprint. However, he thinks it's possible someone took his phone and card while he was asleep, and so they might have used his thumb to give them access to his device while he was sleeping. Once someone had access to the device, I can see that they might be able to access the Revolut app – which could also give them access to his PIN. In any case, Mr M says he stored details of his payment cards and PINs as notes on his device.

I've also considered the information Revolut had provided about what happened. Revolut had sent us the transaction history for the account. It also sent us a security log showing transactions that were declined as fraudulent or suspicious. Based on this, between around 3.30am and 9.40am local time on the day in question there were a number of both successful and declined cash withdrawals from the account. There were also top ups to the account from Mr M's other payment cards. These appear to have taken place at four locations. The logs also show that Revolut blocked Mr M's card 13 times because it suspected fraud or suspicious transactions – but each time the block was reversed using the Revolut app on Mr M's phone.

Revolut also provided Mr M's chat history. This showed that on the morning in question, Revolut received messages from someone using Mr M's phone asking it how to unfreeze the card.

I then summarised what appeared to have happened:

- Mr M's card had already been blocked at the time he said he lost it. It looked as though this happened after an earlier taxi journey was flagged as possibly fraudulent by Revolut's systems.
- At around 3.30am, this block was removed using the app on Mr M's phone – and the equivalent of £118.19 was withdrawn at an ATM.
- This was followed by two attempts to withdraw £167.78 and £19.01 at the same ATM. But these transactions were declined.
- Mr M's app was used to top up the account with £400.

- This was followed by an attempt to withdraw £167.78 – which was flagged as potentially fraudulent and declined.
- After this block was reversed through the app, there were three successful withdrawals of £101.66, £167.78, and £118.19, followed by a further top up of £800.
- This was followed by six declined attempts to withdraw £167.78, £85.13, £101.66, £52.07, US\$202.99 and US\$22.99 respectively. One of these led to the card becoming blocked due to a suspicious transaction, but this block was removed again in the app.
- Mr M's card was next used at a second ATM, a few miles away from the first. Four successful withdrawals of £100.84 were made. This was followed by five declined transactions for the same amount plus one for £67.78. All six of these declined transactions were logged as suspicious card transactions, which meant Mr M's card was blocked each time. Again, the block was removed using the app. These took place between around 5:03am and 5:33am.
- Mr M's card was then used at a third location – which appears to have been in the same county as the second location. First there were two declined withdrawals for £166.96 and £18.19. Both were flagged as suspicious, and led to the card being blocked. But after these blocks were removed, this was followed by two successful transactions of £167.78 and a third of £51.88. There was then a top-up of £800, followed by a further withdrawal of £167.61.
- Two declined transactions of £167.61 were made which were flagged as suspicious. This was followed by a further top up of £800. There were then two further withdrawals of £167.61 followed by declined transactions of £167.61 and £84.94. There were then two successful transactions of £18.81 and £167.61, followed by two declined transactions of £167.61 and £166.98, which again were flagged as suspicious.
- This was followed by five failed attempts to top up the Revolut card by amounts ranging from £200 to £3,000.
- The final cash withdrawal, of £829.14, took place outside a bank around 10 miles south of the second location at around 8:54am. This was followed by seven further attempts to top up the card by amounts ranging from £100 to £800. This final attempted top-up took place at around 9:40am.

Revolut said that each of the cash withdrawals were authenticated using the chip in Mr M's card and his PIN – and had sent me evidence of this. And in order to access the app, it says someone would need to either enter a passcode or use fingerprint authentication. To top up the Revolut card they'd need the three digit code from the back of the relevant payment card and to complete whatever further authentication was required by the other card provider.

I said this didn't on its own prove that Mr M made these transactions. I went on to consider what was most likely to have happened given the information I'd seen.

I first considered the possibility that Mr M made these transactions. I saw that whoever made them needed access to Mr M's device, which he said was secured, together with the PIN for the card, the three digits from the back of at least one of his other payment cards (I saw that the attempts to top up the account using the second payment card failed) and the Revolut app on Mr M's device. In this light, I accept that it was possible Mr M authorised these transactions.

But I didn't think this was most likely in the full circumstances of what happened, bearing in mind the time over which they took place and Mr M's normal spending on the card. The transactions took place more than eight hours after the previous transaction on the card, in the early hours of the morning (from 3:30 am onwards) and at locations increasingly distant from the place where Mr M was staying. Whoever had the card attempted to make repeated cash withdrawals, often just seconds apart, of around £100 to £167. The attempts to use the app and account continued until 9:40 the next morning, when, after 12 failed attempts to top up the account using two different payment cards, the transactions ended.

I accepted that this decision is finely balanced, and that we won't know for certain what happened that evening. But given what I'd said above, I thought it was most likely that someone else got access to Mr M's card, phone and PIN. I didn't think Mr M authorised these transactions.

Revolut said it didn't challenge the fact that a third party may have made the transactions in question. But it said it couldn't have reasonably been concerned about the successful withdrawal attempts or have reasonably prevented the transactions from being made. And Revolut suggested that, in allowing the PIN to become compromised, Mr M may have been grossly negligent – the relevant rules say that Mr M will be liable for unauthorised transactions if he either intentionally or with gross negligence failed to take reasonable steps to keep his personal security credentials safe.

I said I'd thought about that. I recognised that for Mr M to store the security credentials on the same device as his app was careless. But the bar for gross negligence is a high one. Given Mr M says the device was secured, I don't think it was necessarily grossly negligent for Mr M to have stored information on it. But this did mean that once the phone had been compromised that whoever had the phone could thereby gain access to Mr M's other accounts.

I was also mindful that Revolut itself noticed that these transactions were suspicious. It repeatedly blocked Mr M's account – 13 times in total. Each time the block was removed using the app. And then, often following the very next attempt to withdraw cash, the card was blocked again. For example, between 5:06am and 5:39am, Revolut blocked eight transactions in a row. Then after a gap of 50 minutes, Revolut allowed four transactions at the same location before declining transactions again. I also saw that the final payment, at 8:54, followed five failed attempts to top up the account using two payment cards.

With that in mind, I wasn't persuaded Revolut did enough to protect Mr M here. Given the suspicious transactions, I think continuing to block the account would have been reasonable. Or it could have tried to call Mr M to ask him to explain these transactions. I think this was particularly important given the time the transactions were taking place and that it was in another country. And given the transactions that Revolut did block, it's clear it continued to have concerns about the use of the card notwithstanding that the block was being reversed in the app.

For these reasons, I wasn't satisfied that Mr M authorised these cash withdrawals or that Revolut did enough to protect him. And so I thought Revolut should reimburse Mr M for these amounts.

I thought about whether, following the chargeback, Revolut should have used another of Mr M's payment cards to return the funds to the account. I saw that the terms and conditions of the account said that if Mr M owed Revolut money it could recover the amount by taking this off his stored card. As I'd concluded that Revolut should reimburse the transactions made on Mr M's account, I didn't propose to make further findings on this point – but I did think that Mr M found the situation stressful and he went to some effort to show he didn't complete these

transactions.

With all this in mind, I thought Revolut should:

- Reimburse the amounts withdrawn from the ATM plus fees (I worked this out to be £2,870.97),
- Add simple interest to each of these amounts to compensate Mr M for the time he's been out of pocket.
- Pay Mr M £200 for the trouble and upset Revolut had caused.

I said I'd consider anything further I received by 7 January 2022.

Mr M has replied to say he agrees with my provisional findings.

Revolut disagrees. In summary, it thinks its unlikely that the person who managed to top up the account and withdraw the funds was a third party. It says that in order to top up the accounts, Mr M would have needed to authenticate them through his bank. Finally, it says Mr M could have locked the phone remotely once it was lost - and that, given the phone had information about Mr M's payment information on it, he ought to have done this.

I've therefore considered the complaint again.

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.

I've carefully considered the points Revolut has raised. But they don't change my conclusions. I'll explain why.

I acknowledge the points Revolut has made about whether Mr M most likely made the transactions in question. As I explained in my provisional decision, I think this is a finely balanced question. I accept that, given the circumstances in which Mr M says he lost the card, we may not ever know for certain what happened. But for the same reasons I gave in my provisional decision, I think on balance its most likely Mr M didn't authorise these transactions. The use of the card isn't consistent with Mr M's previous use of the card, and the transactions were made at increasing distances from where Mr M was staying.

I note Revolut's comments about the security features of Mr M's device. It points out that to access the device, a third party would have needed access to Mr M's fingerprint – and that in order to change the fingerprint, the third party would also have needed access to Mr M's passcode. I note that if the third party had access to the passcode, they'd have been able to access the phone in any event. Revolut points out that Mr M never mentioned sharing this information with any thief. But I think it's just as possible that he was seen entering his passcode at some point – and I don't think it's surprising that Mr M can't now say exactly what happened.

I've considered Revolut's comments about whether Mr M was grossly negligent. While I recognise Mr M might have locked his phone remotely, based on what Mr M has said it only came to light that his payment card was missing the next morning, by which time the disputed transactions had already ended. I note also that Revolut thinks we should get evidence of how these payments were authenticated from Mr M's bank. But for the reasons I've explained, the evidence I've considered means I'm satisfied that the payments out of the

Revolut account weren't authorised. So don't think this alters Revolut's obligations.

But in any case, I'm still of the view that Revolut could have done more to stop these transactions. Revolut repeatedly flagged these transactions as fraudulent or suspicious. It seems that Revolut had reasons to suspect that these transactions weren't made by Mr M, notwithstanding that whoever made them had Mr M's payment card, PIN and access to the app. As I said in my provisional decision, Revolut could have blocked access to the card altogether or called Mr M to check if the transactions were genuine. It didn't.

For these reasons, I reach the same conclusions as in my provisional decision. I uphold the complaint.

Putting things right

- Reimburse the amounts withdrawn from the ATM plus fees (I worked this out to be £2,870.97),
- Add simple interest to each of these amounts to compensate Mr M for the time he's been out of pocket. If HM Revenue & Customs requires Revolut to deduct tax from this interest it should provide Mr M with a certificate setting out what it has done if he asks for one.
- Pay Mr M £200 for the trouble and upset Revolut had caused.

My final decision

For the reasons above, I uphold this complaint. Revolut Ltd should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 18 March 2022.

Rebecca Hardman
Ombudsman