

The complaint

Mr C complains that Revolut Ltd won't refund disputed transactions carried out on Mr C's account.

What happened

Mr C had an account with Revolut. On 17 February 2022 two smart watches were registered on his account to be used as payment devices. On 17 February 2022 and 18 February 2022 five payments were made using these devices totalling around 2,703 Euros.

Mr C has said he didn't register the devices onto his card, and he didn't make the disputed transactions. Mr C has said that he was abroad on business when the devices were registered with his card. He says the payments were made in a third country he has never travelled to.

Mr C thought his phone had been used to set up the devices when he had visited a phone shop during his trip abroad. The representative had taken Mr C's phone to the back of the shop and had asked him for the code to unlock the phone.

Mr C noticed the transactions when he realised he had less funds than expected in his account.

Mr C complained to Revolut. They declined to refund Mr C. They said because Mr C had his card at all times and hadn't lost his phone, they couldn't agree that Mr C hadn't carried out the transactions.

Mr C complained to our service. One of the investigators looked into the complaint. She thought Mr C should be refunded the disputed transactions. She said Mr C had been a victim of fraud because a representative from a phone company had used Mr C's phone to register the devices whilst Mr C was in the phone shop, without Mr C's knowledge.

Revolut were unhappy with the view they said two codes would have been sent to the phone in order to set up the registrations of the watches to enable payments with the Revolut card. Revolut said Mr C must have been aware of these onetime passcodes.

As there was no agreement the matter has come 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 Mr C is liable for authorised payments and Revolut would be liable for unauthorised payments.

I have seen evidence that Mr C was abroad and that he went to a phone shop to change his mobile phone plan.

Revolut have said that Mr C set up the watches as a payment device and authorised them to make payments with his card. They have said that either Mr C or someone else who he authorised was able to make these payments. They have also said that it is not necessary for the device and the customer to be in the same location in order to carry out the payments so the fact that Mr C was in one foreign country and the transactions took place in another foreign country is not relevant and doesn't show that Mr C didn't authorise the transactions.

Generally, Revolut can hold Mr C liable for the disputed transactions if the evidence suggests its more likely than not, he made or authorised them himself.

I'm satisfied from looking at the evidence that the devices were linked to Mr C's account, and these had been used to carry out the disputed transactions. But the regulations relevant to this case say that is not, on its own enough to enable Revolut to hold Mr C liable. So, I also need to think about whether the evidence suggests it's more likely than not Mr C consented to the disputed transactions being made.

From what I've seen, I don't think it's reasonable for Revolut to conclude Mr C authorised the transactions. I say this because:

- Mr C has always maintained that he didn't authorise the transactions, his story has been consistent and plausible throughout. He says he doesn't own the watch devices that have been linked to the Revolut account.
- Mr C has provided a plausible explanation supported by evidence that he was in a telephone shop abroad. He has said he handed his phone to the rep who took it to the back of the shop. The rep asked Mr C to give him the passcode to unlock the phone. Mr C had a legitimate reason to hand the phone over. I don't find it unusual that Mr C would trust an employee of a phone shop with his phone. I don't think it's unreasonable in the circumstances for Mr C to have given the employee his phone passcode so the employee could access Mr C's phone to carry out what Mr C thought was legitimate activity on his phone.
- Mr C reported the fraud to the telephone company.
- The time the watches are registered coincides with the time Mr C was in the phone shop. It's likely the passcodes were sent to the phone whilst the rep was registering the watches at the back of the store. And the disputed transactions occur in quick succession of the registration -within 24 hours – which I would expect if a fraudster had gained access to the devices.
- Payments continued to be attempted even when declined which suggests the fraudster didn't have access to the phone or Revolut app to check the balance on the account or the status of the card.

The evidence points to the involvement of an unauthorised third party who completed the transactions without Mr C's knowledge and consent so I'm satisfied that Mr C shouldn't be held liable for the disputed transactions.

Revolut have mentioned that this is a case of apparent authority. However, I disagree because Mr C didn't give permission to anyone to add his Revolut card to the watches. He didn't give permission to the representative at the phone shop. He only gave him his phone not his card, so I'm satisfied Mr C didn't have any intention to provide the rep with his Revolut details.

For the sake of completeness, I've gone on to consider the issue of gross negligence. A business might be able, in some cases, to hold a consumer liable for transactions they didn't make or authorise – if they've failed with gross negligence to comply with their obligations as a payment service user, and that has allowed the disputed transaction(s) to take place.

Whether a customer has acted with gross negligence has to be assessed on case-by-case basis.

So, I've also considered whether Mr C was grossly negligent in handing the phone to the representative at the phone shop.

The PSRs place an obligation on the customer to keep their security credentials safe and to let the bank know without undue delay when they become aware their credentials are lost or stolen.

In this case Mr C handed his phone not his card to the representative and although the passcode for his Revolut App was the same as his phone passcode I don't think his behaviour can be classed as gross negligence. The test for gross negligence is an objective test and having thought about what a reasonable person might have done in these circumstances I'm satisfied that a reasonable person would have done what Mr C did and handed over the phone and the passcode. It follows I don't think he acted with gross negligence.

To put things right Revolut should refund Mr C the disputed transactions together with 8% simple interest from the date the transactions occurred until the transactions are refunded.

Mr C has had to pursue his complaint with Revolut. Mr C was put through a great deal of inconvenience trying to get this issue sorted. I have read the chats between Revolut and Mr C and I can see that he found the whole issue distressing. I think Revolut should also pay Mr C £150 for the distress and inconvenience caused whilst pursuing his refund.

My final decision

My final decision is that I uphold this complaint.

I require Revolut Ltd to:

- Pay Mr C the total of the disputed transactions I understand this to be 2,703 Euros.
- Pay Mr C 8% simple interest from the date of the disputed transactions to the date of settlement.
- Pay £150 for Mr C's distress and inconvenience. of having to go to the process of claiming back his money.

If Revolut considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks/ask for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Revolut must pay the compensation within 28 days of the date on which we tell it Mr C accepts my final decision. If it pays later than this, it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 July 2023.

Esperanza Fuentes
Ombudsman