

The complaint

Mr S complains that Revolut Ltd won't refund cash machine withdrawals he says he did not make or agree to.

What happened

Mr S wanted to withdraw cash from his account. He explains that the money was to pay his rent and that this was something he did regularly.

Around 6pm, Mr S went to a cash machine near where he lives. It was located at a bank branch on a busy high street in East London. He says that he entered his card into the machine, entered his PIN, and requested cash. He says the cash machine didn't dispense any money and that his card was retained. Mr S recalls that he tried to cancel the transaction at the machine but was not able to.

Mr S says that he received a notification on his phone showing that two withdrawals had been made from two other cash machines on the same high street, one was for £290 and the other for £500. Mr S says he did not make these withdrawals because he was still standing at the cash machine he'd tried to use.

Mr S explains that the bank branch was closed, so he could not go inside to try and retrieve his card. When he went back to try and collect it, that bank told him to contact his card issuer for help. Mr S contacted Revolut and also reported the matter to the Police.

Revolut declined Mr S's claim for a refund, so he complained. Revolut maintained the same position in its final response. It said it was unable to raise a dispute on Mr S's behalf as there was no evidence to show the transactions were carried out without his knowledge and no trace of fraudulent activity was found on his account.

Our Investigator considered the matter but didn't recommend the complaint should be upheld. He explained the bank's technical evidence shows the disputed withdrawals were made using Mr S's genuine card and PIN.

He thought Mr S must have consented to the transaction as he couldn't see how another person would have known his PIN or been able to access his card. He added that the transactions were not unusual compared to Mr S's typical spending and that Mr S has used the same cash machines since.

Mr S disagreed and asked for the matter to be considered by an Ombudsman. He suggested that the card could have been skimmed or cloned.

He explained he thought that the card was retained in the cash machine and pointed out that he went back to the bank branch when it was open to try and get it.

My further investigation

When the complaint was referred to me, I contacted Revolut and asked it whether it had explored the possibility that there had been a card trapping device on the cash machine that

Mr S had attempted to use. I pointed out that the bank's technical records had no footprint of Mr S's attempted withdrawal, which surprised me given that Mr S recalled entering his card and PIN into the machine and requesting cash. I provided Revolut with a link to an Action Fraud video showing a trapping scam and suggested that the cash machine Mr S had tried to use could have been tampered with in a similar way.

Revolut did not agree. It said I had made an assumption that Mr S had left the cash machine to enable fraudsters to take the card and quickly move to the other cash machines to withdraw money and this directly contradicts what Mr S has said about still being at the cash machine at the time the disputed withdrawals took place.

It said that if the card had been trapped right away, the cash machine would not have asked Mr S to enter his PIN and select an amount to withdraw. It also referred to a photograph Mr S had taken of the cash machine which showed an error on the screen as confirmation that his card had been swallowed. It said that if the card had never entered the cash machine as I had asserted, the machine would still be working, and no error message would have been shown.

Revolut pointed out that if there was a problem with the cash machine and the attempted withdrawal did not go through, it wouldn't be recorded in Revolut's records, it would be in the records of the bank that owned the machine.

I suggested that as Revolut accepts Mr S was still standing at the cash machine he'd tried to use, by default the bank also accepts that Mr S did not physically make the two disputed withdrawals himself. I pointed out that I'd not seen any evidence to suggest that Mr S had agreed that someone else could use his card in this way and he'd not been grossly negligent either.

Revolut disagreed that the transactions were unauthorised. It said the theory of a card trapping device being used is not supported by the consumer's own testimony and that I had not given a clear enough explanation of how the card was removed whilst Mr S was still standing at the machine. It pointed out that Mr S had used the same cash machines at times both before and after the disputed transactions were made. The bank concluded by saying the disputed transactions were carried out with Mr S's involvement because his PIN had been entered. It suggested that if these details were obtained by fraudsters without Mr S's consent or involvement, I should provide "*conclusive evidence or incontestable explanation of how it was done*" because so far there had not been any.

I issued my provisional decision on 12 January 2023. In it, I explained why I intended to uphold Mr S's complaint and direct Revolut to refund the two disputed cash machine withdrawals with interest. An extract of that decision is set out below and forms part of this final decision:

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 am not currently persuaded that Revolut has enough to fairly justify its decision to hold Mr S liable for the transactions in dispute.

Whether a payment transaction has been authorised or not is important because account holders will usually be liable for payments they've authorised and, generally speaking, banks will be liable for unauthorised payments.

If Mr S made the disputed transactions himself or authorised for them to be made on his behalf, it would not be fair to ask Revolut to refund them. But Mr S says he was not involved in the payments in dispute. So the key question for me to consider is whether Revolut has provided enough evidence to hold Mr S responsible.

Revolut can only refuse to refund unauthorised payments if it can prove Mr S authorised the transactions, but Revolut cannot say that the use of the card and PIN issued to Mr S conclusively proves that the payments were authorised. This is in line with the FCA's position, as outlined in its document setting out its role under the Payment Services Regulations 2017.

The FCA says:

"To avoid doubt, it is not sufficient for the PSP to assert that the customer "must have" divulged the personalised security features of the payment instrument, and to effectively require the customer to prove that he did not. The burden of proof lies with the PSP and if a claim that a transaction is unauthorised is rejected, the rejection must be supported by sufficient evidence to prove that the customer is guilty of fraud, gross negligence or intentional breach and the reason for the rejection must be explained to the customer."

Unless Revolut can show that consent has been given, it has no authority to make the payment or to debit Mr S's account and any such transaction must be regarded as unauthorised. To start with, I have seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr S. This means I can say with confidence that Mr S's genuine card was entered before each of the two disputed withdrawals were made and his PIN was entered correctly. Mr S is adamant that his card was retained by the cash machine he'd tried to use. When I contacted Revolut, I suggested that Mr S's card must have removed from the machine somehow. The bank was concerned that I was being vague. But the bank's available technical evidence confirms that Mr S's genuine card was used to make the disputed withdrawals. What this evidence cannot tell me is exactly how and when the card was retrieved.

In cases when there is a dispute about what happened, or when key evidence is missing or incomplete as it is here, I base my decision on the balance of probabilities. In other words, what I consider is most likely to have happened in the light of the evidence that I do have.

It is not my role to identify and then obtain the evidence to support a particular theory about what might have happened. But from the evidence that is available for me to consider in this case, the bank's explanation that Mr S has authorised the withdrawals is no more likely than my suggestion that he did not. The circumstances as Mr S has described them are consistent with the cash machine being tampered with by the addition of an entrapment device preventing the card from being returned to the cardholder. It's also possible for fraudsters to place a small camera to the machine directed at the PIN pad in order to learn the PIN.

I accept that this is a finely balanced case. Both parties have theories about what could have happened. But I don't consider the available evidence sufficiently supports the position that Mr S most likely authorised the disputed withdrawals himself.

Mr S has been consistent and clear that he entered his card into the cash machine and it was not returned to him. He said:

“So when I was standing at the ATM that did not return my card, after a few minutes, a notification came on the phone that the kata[sic] had disappeared £790 and then I saw on the phone that had withdrawn from H and S. I know how it could happen? I testified everything to the police my pin I remember I don’t hide it anywhere.”

This extract is taken from when Mr S first reported the situation to Revolut and the bank has placed a lot of weight on it to support that there was no opportunity for the card to be taken from the machine because Mr S was in the vicinity.

But Revolut did not ask Mr S to describe in any detail what happened at this time. Vital questions should have been asked about around the cash machine he tried to use and what happened once his card had been retained. It is unclear whether Mr S spoke to anyone else, whether he was distracted, whether he tried to enter his PIN again to get the card back, whether he stepped away from the machine to try and go into the bank, whether there was a queue, whether there were people waiting behind or around him. Given the disputed withdrawals happened over 18 months ago, it is unlikely that Mr S will be able to remember as much now as he would have been able to recall if he’d been asked at the time.

I’m also mindful that the cash machine Mr S tried to use and the two cash machines where the disputed withdrawals were made are located on a very busy high street in East London. The disputed transactions took place during the evening rush hour. As such, it would not have been difficult for a fraudster to have been loitering in the area without standing out. In addition, the pattern of usage of the card such as an incorrect initial PIN entry and moving from cash machine to cash machine very quickly followed by declined transaction attempts does match the kind of activity that could typically be associated with fraudulent use.

I accept the bank’s point that it does not have automatic access to the records of a cash machine owned by a third party. But Revolut did not contact the bank that owns the machine Mr S tried to use and so has not been able to establish whether there were any problems reported with that machine at the time that Mr S was using it. By not doing so, potentially valuable evidence has not been obtained for me to consider.

When I weigh everything up, I am not as sure as I would need to be that Mr S made the transactions or that by his actions he authorised someone else to make them on his behalf. It is just as likely that the transactions happened because his card and PIN were stolen from him.

His explanation of what happened and his behaviour in discovering and reporting the transactions is consistent with Mr S not consenting to them. I have not seen any evidence that conclusively shows that Mr S was involved in the transactions or that he benefitted from them in any way. I don’t think the fact that Mr S has used the same cash machines before and since the disputed withdrawals were made is enough to say that he used them at this time too. It’s not surprising that Mr S regularly uses these cash machines as they are local to him and his statements do support what Mr S has said about paying his rent in cash. In addition, I don’t think Mr S would have reported this matter to the Police if there was any possibility that he was involved.

I am also not persuaded that the transactions happened because Mr S acted with gross negligence. I’ve found what Mr S has said to be consistent and I am not currently inclined to think he has shown a very significant degree of carelessness, taking into account all the circumstances of this complaint.

Having considered all the evidence and on balance, I don't currently believe there's enough to show Mr S authorised the disputed withdrawals. As I have explained, it is for Revolut to show that Mr S authorised these payments and not for Mr S to show that he did not. I am not currently persuaded that it is fair and reasonable for Revolut to hold him liable for these disputed withdrawals.

Under the Payment Services Regulations, Revolut may make its customer liable for losses up to a maximum of £35 resulting from unauthorised transactions from the use of a lost or stolen payment instrument. This does, however, not apply if it was not possible for the customer to detect the loss, theft or misappropriation before the payment was made (unless the customer acted fraudulently). There is no mention of this in the terms and conditions that apply to Mr S's account, so I shall assume that Revolut will not be choosing to deduct the first £35 of any refund for this claim. If it considers it has the right to do this, it should let me know as part of its response to this provisional decision.

Responses to my provisional decision

Revolut responded to say that it did not have anything else to add.

Mr S responded to say that he fully agreed with the decision because he did not authorise withdrawals of £500 and £290. He pointed out that Revolut never tried to recover the card from the bank that owned the cash machine where he attempted to withdraw cash. He reiterated that he reported the theft to the Police and that Revolut did not investigate the Police investigation, which meant CCTV showing the cash machine at the time of the incident was not obtained. He pointed out that someone attempted to make another withdrawal two days after he had blocked the card and when there were no funds in the account. Mr S said the only person that would attempt to withdraw cash from an account which contains no funds and where the card is blocked is a thief.

As both parties have now responded, I have reviewed the complaint afresh.

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.

Revolut did not challenge the proposed outcome or put forward any new points for me to consider. Mr S's comments in response to my provisional decision show his strength of feeling and overall frustration about the situation. I agree with his sentiments that Revolut's investigation did not go far enough at the time. But as neither party has objected to how I proposed settling this complaint, I see no reason to depart from the conclusions set out in my provisional decision and summarised above.

Putting things right

To put things right, Revolut should now:

- Refund the two disputed cash machine withdrawals totalling £790
- To recognise that Mr S has been deprived the use of these funds, Revolut should add 8% simple interest a year to those transactions from the date they debited his account until the date of settlement. If Revolut considers that it is required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much it has taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons I've explained, I uphold this complaint against Revolut Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 March 2023.

Claire Marsh
Ombudsman