

## **The complaint**

Mr M is unhappy that Revolut Ltd won't refund payments it didn't make.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving the reasons for my 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.

Having done so, I agree with the outcome reached by our investigator for these reasons:

- The starting position under the Payment Services Regulations 2017 (PSRs) is that Mr M is liable for authorised payments and Revolut is liable for unauthorised payments.
- To consider a payment authorised, the PSRs explain that Mr M must have given his consent to the execution of the payment transaction – and that consent must be in the form, and in accordance with the procedure, agreed between him 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 Mr M consents to making payments using Apple Pay, which is the nature of the payments in dispute here. They simply say that Mr M can make payments using his Revolut Card. So I've thought about what practical steps are needed to make these payments. It seems Mr M would've needed to use his Apple device and its associated biometrics with the merchant to make the payments.
- Here, it's not disputed that it wasn't Mr M 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 Mr M's card details. It follows that I don't think Mr M used the agreed form and procedure to consent to these payments.
- Revolut argue that, regardless of the this, Mr M authorised these payments with 'apparent authority' by sharing his card details and a one-time passcode.
- But I've not been persuaded Mr M did share his card details. Instead, it seems the caller already had these, given Mr M's consistent testimony they relayed information about them to establish the call was genuine. This is in keeping with many other scams our service sees.
- Considering Mr M's card details were likely stolen, and that he was tricked into handing over the one-time passcode under the guise he was removing Apple Pay, I don't think he gave apparent authority. Because I don't think it would be reasonable

to say these circumstances amount to Mr M giving permission for someone else to go through the steps to make these payments on his behalf. Afterall, he'd didn't know payments were going to be made.

- It follows that I consider these disputed payments to be unauthorised. Revolut submit it still shouldn't be held liable under the PSRs because it thinks Mr M failed with gross negligence to comply with the terms of the account and keep his personalised security details safe.
- Mr M acknowledged he shared a one-time passcode with the caller. He's explained he did this because he believed he was genuinely talking with Revolut given the personal information they knew about him and the security procedures they took him thorough. And because he'd been told that someone was attempting fraudulent transactions and the code would stop Apple Pay on a fraudulent device. He added that the text message came through from Revolut when he thought he was speaking with them – so it all added up in the moment.
- Having considered the circumstances carefully – how Mr M was cleverly duped into believing he was talking with Revolut and the concerning situation they presented – I can see how Mr M shared the code. I don't think it meant he acted with very significant carelessness to conclude he was grossly negligence.
- In saying this, I've considered Revolut arguments about the content of the message: *'Revolut verification code for Apple Pay: XXXXXX. Never share it with anyone, ever'*. But in the circumstances – when Mr M trusted the caller and the message came through from Revolut when he expected – I can see how he simply focussed on the code he'd need to share without dwelling on the warning at the end of the message. Particularly as he was likely worried and acting in the heat of the moment, given that he'd been tricked into believing his money was at risk.
- Taking this all into account, I don't think Revolut has shown Mr M failed with gross negligence. So I conclude he isn't liable for these disputed payments and Revolut needs to put things right – by refunding his losses from this unauthorised payments alongside interest to compensate him for the time he's been out of pocket.
- Revolut ought to have refunded this much sooner. Its failure to do so led Mr M to worry about the money lost and be inconvenienced in pursuing this. So, I agree with the investigator's recommendation to also award £100 to reflect his non-financial losses.

### **My final decision**

For the reasons I've explained, I uphold Mr M's complaint. Revolut Ltd must:

- Pay Mr M the total of the unauthorised payments, less any amount recovered or refunded. I understand this to be £2,913.39.
- Pay 8% simple interest per year on this amount, from the date of the unauthorised payments to the date of settlement (less any tax lawfully deductible).
- Pay £100 for Mr M's distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 August 2023.

Emma Szkolar  
**Ombudsman**