

The complaint

Mrs H is unhappy that Revolut Ltd won't refund payments she didn't make.

What happened

Mrs H was contacted by someone claiming to be from Revolut who was, in fact, a fraudster. She's explained she was told her account had been compromised and that she needed to follow their instructions to protect her account and move her money to safety.

During the call, they convinced Mrs H to share sensitive information with them, as well as take steps to unblock her card on her Revolut app. Unbeknownst to her, this meant fraudsters were able to set up Apple Pay with her card details on their own device and make two payments to Selfridges and Remitly totalling £13,001.99.

When Mrs H disputed these payments with Revolut, it declined to refund her. So she brought her concerns to our service to investigate.

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've reached the same outcome as our investigator for these reasons:

Did Mrs H authorise the disputed payments?

I've firstly considered whether Mrs H authorised these payments. This is relevant as, in line with the Payment Services Regulations 2017 (PSRs), she would generally be liable for payments she authorised – whereas Revolut would be liable for unauthorised payments.

The PSRs specify that authorisation depends on whether the payments were authenticated correctly – and whether Mrs H consented to them. It's not disputed they were authenticated correctly (as in, the correct payment steps were completed). So I've gone on to consider whether she consented to them.

The PSRs specify how consent is given – it must be in the form, and in accordance with the procedure, agreed between Mrs H and Revolut.

To establish the agreed form and procedure, I've reviewed the relevant terms and conditions. These don't set out in detail how Mrs H consents to making payments using Apple Pay, which is the nature of the payments in dispute here. So I've looked at the practical steps that would've been needed to make the payments. It seems she would've needed to use her Apple device and its associated biometrics with the merchant to make them.

Here, it's accepted Mrs H didn't use the Apple device to make these disputed payments. Instead, fraudsters set up Apple Pay on their own device using Mrs H's card details and

made them. It follows she hasn't used the agreed form and procedure to consent to these payments.

Revolut argue that the payments should be considered authorised because Mrs H shared a one-time passcode (OTP) which was used to set up Apple Pay on a fraudster's device. It adds that when they declined the first transaction, she said she'd made it and confirmed the card would be unblocked on the app.

I don't think either of these points change the fact that Mrs H didn't use the agreed form and procedure to consent to the payments. But I have thought about whether they could mean that she gave permission for a third party (i.e. the fraudsters) to go through the steps for giving consent.

I've considered how Mrs H was tricked into sharing the OTP in the circumstances of a scam – she thought she must follow the caller's instructions to supposedly protect her compromised account. Given this deception, I'm not persuaded she was reasonably permitting them to consent to payments using Apple Pay.

Similarly, Mrs H was tricked into going through the process on her app to confirm the transaction and unblock the card. She's explained she was led to believe they needed the card to be unblocked to be able to safeguard the account – a common tactic we hear victims report in this type of scam. So again, given that she was ultimately deceived, I don't think these steps could reasonably mean she was now allowing them to use Apple Pay to consent to payments.

I've noted Revolut's point that these steps within her app meant she was aware of payments leaving her account, which it considers to be consent. But when she unblocked the card, the attempted payment had been declined. So, at that point, no money had left her account. But in any event, I disagree with the simplification that her awareness equals her consent. As it's likely she would've been led to believe these were evidence of the fraud they were trying to stop.

Taking this all into account, I'm not satisfied Mrs H went through the steps to consent to these disputed payments, nor do I think that she gave someone else permission to. It follows that I regard them to be unauthorised payments, in line with the PSRs.

Is there a reason Mrs H ought not be refunded for these unauthorised payments under the PSRs?

The PSRs set out some circumstances that would mean Mrs H, rather than Revolut, would be liable for unauthorised payments. Of most relevance here is whether she failed with gross negligence to adhere to the terms of the account or keep her personalised security details safe. Having considered the matter carefully, I don't think Revolut has shown that's the case. In saying that, I've considered:

- She received a call using Revolut's spoofed number, and the caller knew personal and sensitive information about her and created a professional, authoritative atmosphere. So I can see how she trusted the caller was genuine and ultimately believed her account was at risk.
- I recognise Mrs H shared an OTP from a message which warned her not to and provided context that it was for Apple Pay. But given her trust in the caller and panic at the situation, I can see why she followed their instructions and simply focused on the number she thought would help protect her account. Particularly as she'd been primed to expect the message and it came through from Revolut.

- I've also considered how Mrs H unblocked her card. As I've said, she's explained this was at the instruction of the caller who said they needed her card to be active so they could intervene and protect her money. I can see how, in the heat of the moment, this sounded plausible to someone that's not an expert in fraud.
- And as I've mentioned, I'm also mindful that the attempted payment would've looked like evidence of fraud they were trying to stop – and likely created more urgency for her to follow their advice.
- Taking these circumstances into account, I can see why she acted the way she did. While it may have been careless, I'm not persuaded Mrs H acted with *very significant* carelessness – to conclude that she failed with *gross* negligence.

Conclusions

It follows that, in line with the PSRs, I don't consider Mrs H can be fairly held liable for these unauthorised payments and Revolut must put things right – by refunding her losses from the payments alongside 8% simple interest per year to compensate her for the time she's been out of pocket.

I've also considered Mrs H's non-financial losses. In line with the PSRs, Revolut ought to have refunded this much sooner. While this wouldn't have taken away the distress caused by the scam itself, it would've allowed Mrs H to move on quicker. To reflect this prolonged upset, Revolut must pay her £150.00.

My final decision

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

- Pay Mrs H the total of the unauthorised payments, less any amount recovered or refunded.
- 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 Mrs H £150 for her distress.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 10 October 2024.

Emma Szkolar
Ombudsman