

## **The complaint**

Miss P is unhappy that Revolut Ltd won't refund her for payments she 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:

### Authorisation

- I've started by considering whether Miss P authorised these payments. This is relevant as, in line with the Payment Services Regulations 2017 (PSRs), she would generally be liable for payments she authorises – whereas Revolut would be liable for unauthorised payments.
- The PSR specify that authorisation depends on whether the payment transactions were authenticated correctly – and whether the Miss P consented to them. It doesn't appear to be in dispute that the payments 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 Miss P 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 Miss P 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 the payments.
- Here, it's not disputed that it wasn't Miss P who used the Apple device to make these disputed payments. Instead, it's agreed fraudsters set up Apple Pay on their own device with Miss P's card details. It follows that I'm not persuaded she used the agreed form and procedure to consent to these payments.
- Revolut argue that the payments should be considered authorised because Miss P shared her card details and a one-time passcode (OTP) – which were used to set up Apple Pay on a fraudster's device.

- It remains that Miss P didn't use the agreed form and procedure – these were steps to set up a payment facility, not the steps to consent to payments. But I have thought about whether this could reasonably mean that she gave permission for someone else to consent to payments on her behalf.
- Firstly, I've not persuaded Miss P did share her card details. She has consistently explained she only shared the OTP. And it appears she received a notification just before she the scam call, saying her card had been verified. So I think it's likely the fraudsters already had her stolen card details prior to the call.
- Secondly, while Miss P did share the OTP, she's explained that was because she trusted the caller was helping to keep her money safe. So I don't think she understood she was, in fact, allowing someone to set up Apple Pay.
- Considering the stolen credit card details and how Miss P was tricked, I don't think it'd be fair to say she gave a third-party permission to consent to payments on her behalf. It follows that I'm satisfied the disputed payments were unauthorised.

#### Gross negligence

- Revolut submits that, even if these payments are to be considered as unauthorised, it still shouldn't be held liable them. That's because it thinks Miss P failed with gross negligence to comply with the terms of the account and keep her personalised security details safe – something which, if proven, would mean Miss P wouldn't be entitled to a refund under the PSRs.
- To assess this, I've reflected on the circumstances that led to Miss P sharing the OTP with the fraudster.
- Miss P received a notification on her Revolut app saying her card details had been verified, followed by a call from someone claiming to be from Revolut, who told her account had been compromised. She recalled they knew several pieces of her personal information and placed a lot of pressure on her, so she felt panicked and shared the OTP when they asked without taking in the wider context of the message.
- Given how the call followed genuine activity on her app and the personal information they knew, I can see why Miss P trusted the caller was genuinely from Revolut and how she became panicked. In this state, I can also understand how she shared the OTP when she was asked for it, thinking it was to keep her account safe.
- This isn't all to say Miss P acted perfectly reasonably – it's possible to call her action careless. But, having considered the circumstances carefully, I'm not persuaded Revolut has shown she failed with *gross* negligence.

#### Conclusion

- It follows that, in line with the PSRs, I don't consider Miss P can be fairly held liable for these unauthorised payments and Revolut must to 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.

## **My final decision**

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

- Pay Miss P 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).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 21 May 2024.

Emma Szkolar  
**Ombudsman**