

The complaint

Mr K complains that Revolut Ltd (“Revolut”) hasn’t refunded transactions totalling over €2,500 made from his account that he says he didn’t authorise.

What happened

The details of this complaint are well known to both parties, so I won’t repeat everything again here. In brief summary, Mr K fell victim to a scam after he received a text message purporting to be from a French courier service asking him to fill out a form in order to receive a parcel.

Mr K completed the form with his details, including his payment details, as he was under the impression he had to make a small payment for delivery of the parcel. However, Mr K later discovered that his details had been used to set up Apple Pay on another device, which had then been used to make the following transactions:

Date	Payee	Amount
16 January 2023	Relais Du 8 Mai	€50
16 January 2023	Fend Italia Srl	€670
16 January 2023	Apple.com/fr	€499
16 January 2023	Verse	€500
16 January 2023	Verse	€500
16 January 2023	Presse Bernabo	€260.50
16 January 2023	Indigo 130031	€4
17 January 2023	McDonalds	€15.60
17 January 2023	Sirvent Pneus	€40
17 January 2023	Sirvent Pneus	€60

Mr K reported the unauthorised transactions to Revolut, but it said it wouldn’t refund them as it thought they had likely been authorised by Mr K. Revolut said that in order to set up Apple Pay on another device, he would’ve had to have disclosed a One Time Passcode that had been sent to his device. Mr K said he hadn’t received any text messages from Revolut and referred the matter to our service.

Our investigator upheld the complaint. She thought it was likely that that Mr K had unwittingly

shared his details with the scammer when he was completing the form and considered the first payment was likely authorised by Mr K as he was under the impression he was making a payment for delivery of a parcel. However, the investigator didn't think he consented to or authorised the disputed payments that followed, so she recommended that Revolut refund a total of €2,549.

The investigator also didn't think Mr K had acted with gross negligence in sharing his payment information and security details with the scammer. Revolut disagreed, so the matter has been escalated to me to determine.

I issued my provisional findings on this complaint in April 2024. I said I was minded to reach a different outcome to the investigator as I didn't intend upholding it for the reasons I've set out below:

I accept it's likely that the transactions were not authorised by Mr K, and that he has been caught up in a scam here, where he has been tricked into giving his payment details that have then been used to make the disputed transactions.. However, that does not mean Revolut is automatically liable to refund the payments, as I must also consider whether Mr K has complied with his obligations under Revolut's terms and conditions to keep his payment information and security details safe, or whether he has failed to do so with gross negligence. Under the Payment Service Regulations (PSR) 2017, If a payment service user has been grossly negligent in sharing their security information, a firm will not be required to refund any unauthorised transactions that stem from the negligence..

In this instance, the disputed payments made on 16 and 17 January 2023 were made via Apple Pay. And in order to set up Apple Pay on another device, the user would have needed the long card number of Mr K's Revolut card, his CVV code and expiry date. This would all needed to have been input into the Wallet app, followed by a One Time Passcode (OTP) that was sent to Mr K's phone.

Mr K has explained how a third party would have come into possession of his card details, as he entered these into the fraudulent courier platform thinking he was making a payment. I do not think this was grossly negligent itself, as the courier platform looked legitimate and I think many other people would have also been tricked into sharing their card payment details, thinking they were making a payment for a parcel to be delivered. However, this does not explain how a third party came into possession of the OTPs that were needed to tokenise Mr K's payment card on another device.

Mr K said that he does not recall receiving any OTP's from Revolut at the relevant time. However, Revolut has provided evidence from its systems showing that two OTPs were sent to his mobile (using the correct number), which were then used to set up Apple Pay. These messages said:

"This code will be used to add your card to another Apple Pay device. Don't enter it anywhere unless you want to add your card to a new device. Don't share this code with anyone, even if they claim to be from Revolut. Revolut verification code for Apple Pay: xxxxxx"

The OTPs sent to Mr K's phone were used to tokenise his payment card on another device, which was then used to complete the disputed transactions on 16 and 17 January 2023 via Apple Pay. I understand that Mr K does not recall receiving these messages. But based on the evidence I have, I think it's more likely than not that they were sent to, and received on, Mr K's phone. I have attached a copy of the evidence

Revolut have provided, showing the SMS messages were sent to his mobile number.

Mr K hasn't said that his mobile had been lost or stolen on 15 January 2023, or that anyone else was in possession of his phone at this time. There is therefore no other way the payments could have then been made using Apple Pay, unless Mr K disclosed the OTP to the third-party fraudster. However, I haven't been given any explanation or context as to how this code came to be shared, or how Mr K might have been tricked into disclosing it.

But given the message sent to his phone clearly stated that it was to be used to add his payment card to another Apple Pay device – and that it should not be shared with anyone – I can only reasonably conclude in these circumstances that Mr K had read this message and was then grossly negligent in sharing the OTPs.

I say this because it ought to have been readily apparent from the message that this was the purpose the code was being used for. And I think it would have taken a significant degree of carelessness (falling below what would be expected of a reasonable person in these circumstances) to have read this message and then continued to share the code, knowing there was an obvious risk that it was being used to set up Apple Pay on another device that would then be used to make payments.

As a result, Revolut would not be required to refund the unauthorised transactions under the Payment Service Regulation 2017 in these circumstances, so I do not intend asking it to take any further action.

I invited further comments and evidence from both parties. Revolut didn't have anything further to add, but Mr K disagreed with my provisional findings.

In summary, he said he has no recollection of receiving or deleting any OTPs that might have been sent from Revolut. Mr K said It cannot be proved that he received these SMS messages, so there's not enough evidence to demonstrate that he has been grossly negligent in sharing them with the scammer. He said he cannot explain how the scam occurred but thinks he may have somehow been tricked into setting up Apple Pay. Mr K also questioned why Revolut didn't stop the payments in light of the unusual payment activity.

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.

I've also taken Mr K's recent comments into account in response to my provisional findings. But his submissions haven't changed the conclusions I've set out above. I'll explain why.

Mr K has said that Revolut cannot prove that he received the OTPs that were sent to his phone, which I acknowledge. But Revolut has been able to prove, with evidence, that the messages were *sent* to his phone. And Mr K has not been able to demonstrate that there were any problems with his phone or network at the time that would mean he wouldn't have received the messages.

So, I appreciate it cannot definitely be proven that the messages were received, But on the *balance of probabilities* (which is the evidential standard upon which the Financial Ombudsman Service operates), if the messages were sent to Mr K's phone, it seems more likely than not they would have been received on his phone.

Mr K also hasn't been able to offer a plausible explanation for how the third-party scammer managed to obtain the OTPs sent to his phone if he didn't share them. So the only plausible explanation here is that Mr K did receive the messages and shared the OTPs with the scammer, which is what I consider to be most likely on the evidence presented.

And given the message from Revolut clearly stated that the code was being used to set up Apple Pay (and in the absence of any other explanation for why he would have shared the codes), I'm satisfied that sharing the OTPs in this context would meet the bar of gross negligence for the purposes of the Payment Service Regulations 2017. Revolut is therefore under no obligation to refund the payments in line with the PSRs.

Mr K also says that Revolut ought to have stopped the transactions in light of the unusual payment activity. But while I appreciate there were several transactions being made across 16 - 17 January 2023, the payments were being made for different amounts to different merchants, and I can see from Mr K's transaction history that it wasn't unusual for him to make multiple payments from his Revolut account on the same day. The value of each payment also wasn't particularly unusual or indicative of a heightened risk of financial harm, cumulatively totalling just over €2,500 across two days. The value of the transactions were not out of character for the sort of spending previously made from Mr K's account, so overall, I'm not persuaded there was anything that ought to have triggered Revolut's fraud monitoring systems and I don't think it has done anything wrong by failing to block any of the disputed payments.

I appreciate this will likely come as a disappointment to Mr K. And as I've set out previously, I don't dispute that he has fallen victim to a scam here. But overall, I don't consider Revolut can fairly be held liable to refund the payments in the circumstances of this case.

My final decision

For the reasons given above, I do not uphold this complaint.

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

Jack Ferris
Ombudsman