

The complaint

Mr S complains that Revolut Ltd has declined to refund payments from his account that he says he didn't make or allow anyone else to make.

What happened

Mr S says that his mobile phone was stolen while he was working in a cafe in early February 2023. He says he reported it to the police at the time, purchased a new phone, and took steps to delete the data from his stolen phone remotely by logging into his iCloud.

Around six weeks later, two payments totalling £9,000 were sent to a new payee from his Revolut account using the Revolut app on his stolen phone. Mr S says he doesn't know how this happened and he asked Revolut to provide a refund.

Revolut declined Mr S's claim for a refund; it said it had tried to recover his funds from the recipient, but that no funds remained. Revolut also said that Mr S had acted with gross negligence by not reporting his phone being stolen to Revolut and by not keeping his secure details safe.

When Mr S complained to our service, the investigator didn't uphold the complaint – in summary they thought it was more likely than not that Mr S had authorised the transactions.

Mr S didn't agree, he said the money was stolen and that he hadn't been negligent.

The matter was passed to me for consideration by an ombudsman and I asked for some further information from both parties to better understand what had happened.

I issued my provisional decision on 22 March 2024 explaining why I intended on upholding the complaint. In summary I explained why I didn't think the evidence supported the disputed payments being authorised and that I didn't think Mr S had failed in his obligations with gross negligence. So, I thought Revolut hadn't declined Mr S's request for a refund fairly.

Mr S accepted my provisional decision, but Revolut didn't agree. In summary, Revolut reiterated that it thought Mr S should have reported the theft of his mobile phone to it, and that he had breached the account terms and conditions and his obligations under the relevant law by failing to keep his phone and secure information safe. Revolut didn't specifically address why it didn't agree with my provisional findings that Mr S hadn't failed his obligations with 'gross negligence', but it did say it would have been prudent for Mr S to change his Revolut app passcode when his phone was stolen. And it questioned whether Mr S did actually delete the data from his stolen phone remotely.

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, including considering the responses to my provisional decision, I am upholding this complaint. I'll explain why.

Did Mr S authorise the disputed payments?

Revolut doesn't appear to have treated the disputed payments as authorised. Rather it has accepted Mr S's explanation that his phone was stolen in early February 2023.

For the avoidance of doubt, I'm also persuaded that the payments are unauthorised. Mr S has been consistent in his explanation of events and has shown us evidence that he reported his phone theft to the police and replaced his phone at the time. Mr S then began using his new phone to access his Revolut account with the only activity using his stolen phone after its theft being linked to the disputed payments. This activity appears to have taken place in another country and the payments went to a new payee. The evidence surrounding the disputed activity also appears to be consistent with a pattern of fraud known to Revolut. This is all consistent with Mr S's phone being stolen and the transactions being made by an unknown third party.

Has Revolut acted fairly in declining Mr S's request for a refund?

Under the Payment Services Regulations 2017 (PSRs), the starting point when a payment is unauthorised is that the payment service provider (here Revolut) must provide a refund to the payment service user (here Mr S). There are, however, exceptions to this which Revolut has relied on when declining to reimburse Mr S.

Regulation 72 sets out the obligations on Mr S in relation to his payment instruments and personalised security credentials. This says, amongst other things, that Mr S must:

- Use the payment instrument in accordance with the terms and conditions governing its issue and use
- Notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument; and
- Take all reasonable steps to keep safe personalised security credentials relating to a payment instrument or an account information service.

And regulation 77 says that Mr S is liable for unauthorised transactions where he has *"with intent or gross negligence failed to comply with regulation 72"*.

This is similarly set out in Mr S's account terms and conditions.

In short, Revolut says it is holding Mr S liable for the payments because it thinks he has failed in his obligations with gross negligence in two ways:

1. By failing to notify it when his phone was stolen; and
2. By failing to keep his secure information safe.

Having considered the evidence and arguments available, I'm not persuaded this is fair in the circumstances. I'll explain why.

The FCA approach document explains that gross negligence is a higher standard than negligence under common law, and that the customer needs to have shown a very significant degree of carelessness. So, I'm satisfied this would need to involve a serious disregard or indifference to an obvious risk.

With this in mind, I don't think Revolut has acted fairly in concluding that Mr S has acted with gross negligence by not informing it when his phone was stolen or in failing to keep his secure information safe.

I'll address each point in turn, starting with Mr S not informing Revolut that his phone had been stolen.

- When Mr S's phone was stolen, it contained the Revolut app which could be used alongside his security credentials to make payments. Revolut says this means it was a payment instrument.
- If I accept Mr S was obliged to notify Revolut of his phone containing the Revolut app being stolen, I would still need to conclude that he had failed in this obligation with gross negligence in order for it to be fair for Revolut to have declined his claim on this basis.
- However, I'm not persuaded that most people would appreciate that they needed to inform their payment services providers (that they had banking apps with) in the event their phone was stolen. Nor do I think most people would recognise an obvious risk to their banking apps or accounts after their phone was stolen. Particularly if they had deleted the data from their stolen phone remotely as Mr S says he did.
- Revolut appears to have questioned Mr S's honesty and it isn't persuaded that Mr S did delete his data remotely. However, given that Mr S has been consistent in his recollection of events and has provided supporting evidence that he contacted the police, action fraud, replaced his phone, and received notifications regarding finding his phone, I find him to be credible. Whether he successfully deleted all of the data remotely or if the thieves somehow prevented this, I have no reason to conclude Mr S has been dishonest about the steps he took.
- I note that the interpretation of a phone being a "payment instrument" or the expectation to report a phone stolen to Revolut wasn't specifically set out in the account terms and conditions applicable to Mr S's account at the time. There is a reference to a requirement that customers keep their devices safe, but I don't think it would be reasonable to conclude he had acted with gross negligent because his phone had been stolen.
- Revolut's website contains a support page called "My phone has been lost or stolen" which provides guidance for its customers on what to do in that situation. At the time, this didn't advise customers to inform Revolut in the event that their phone had been lost or stolen. So, I'm not persuaded there was a clear expectation shared with customers or that there was an obvious risk that Mr S ought to have been aware of.
- For these reasons, I don't think it would be fair to conclude that Mr S had acted with a significant disregard or indifference to an obvious risk by not reporting to Revolut that his phone had been stolen. I think most people would assume their banking apps were safe given the additional security in place on mobile phones and to access secure apps. This means that I don't consider that Mr S's behaviour amounts to gross negligence for the purposes of the PSRs or the account terms and conditions. So, I don't think it would be fair to hold him liable for the payments on this basis.

Moving on to the issue of whether Mr S acted with gross negligence by failing to keep his personalised security credentials safe:

- While I recognise Revolut has provided evidence that Mr S's stolen phone was used

to access his account, I'm not persuaded this means Mr S must have been grossly negligent in keeping his log-in information safe.

- Mr S says he's never knowingly shared his secure information and he doesn't know how his account was accessed. He says he took steps to delete the data on his stolen phone remotely (which I've covered in more detail above).
- Mr S has shown us that he received a notification that his Apple ID had been used to sign into his iCloud via his web browser the day before the disputed payments. It's possible this is related to how his account was compromised.
- I've asked Revolut why it's confident that Mr S did share his secure information, and why it thinks this is more likely than a sophisticated fraudster finding another way to bypass the security in place. Particularly given Revolut is aware that what Mr S has reported is consistent with a known pattern of fraud. However, it hasn't responded to this specific question with any evidence or explanation.
- While I agree it would have been prudent for Mr S to have changed his Revolut app passcode when his phone was stolen, I don't think most people would consider there to be an obvious risk to their passcode being compromised if they hadn't saved it on their phone. While this is recommended on Revolut's website, I'm not aware that Mr S would have seen this. So, I don't think it was grossly negligent of him not to have taken this step.
- I'm conscious that without the physical phone, there are limits on what we can know about how this happened and what Mr S can "prove". For example, his stolen phone isn't available for an expert to check for malware etc.
- There are several possibilities for how this has taken place, and on the evidence available, I don't think it would be fair to conclude that Mr S had acted with gross negligence in failing to keep his secure information safe.

So, for the reasons explained, I don't think Revolut has fairly declined Mr S's request for a refund.

My final decision

My final decision is that I currently intend on upholding this complaint and requiring Revolut Ltd to:

1. Reimburse £9,000 to Mr S.
2. Pay Mr S simple interest at a rate of 8% on this amount from the date of payment to the date of settlement.

If Revolut considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much it's 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.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 June 2024.

Stephanie Mitchell
Ombudsman