

## The complaint

A company, which I'll refer to as B, complains that Revolut Ltd won't refund payments it didn't make.

Mr and Mrs B, who are directors of B, bring the complaint on B's behalf.

## What happened

Mr B explained that, following a number of missed calls, he answered a call from someone who said they were from Revolut's fraud team – they said there was fraudulent activity on B's account and they'd need to up its security. Mr B believed them as the call came from Revolut's number, and they were able to share several pieces of sensitive information about B.

Mr B doesn't recall sharing any sensitive information with the caller. He explained he saw money leaving the account, but he was reassured by the caller that it would be returned and was part of the procedure for upping the security. He also remembered creating a virtual card – that was because he froze the original card so he needed one to be able to use going forward.

Having seen B's account emptied, Mr B contacted Revolut realising he'd been scammed. It declined to refund B's losses. It said the chargeback claim was rejected appropriately and highlighted that the payments were made by Apple Pay, requiring a one-time passcode (OTP).

Unhappy with Revolut's response, B brought its complaint to our service to investigate. I issued my provisional findings upholding B's complaint. In summary, I thought the disputed payments were unauthorised and, in line with the Payment Services Regulations 2017, I considered Revolut liable to refund them.

B didn't have anything further to add. Revolut disagreed with my findings. In summary:

- It highlighted that B had added its card to Apple Pay before. So this doesn't align with my assumption that Mr B didn't know that tokenization facilitated the payments.
- It agreed with the investigator's findings that said fraud was only possible due to Mr B's gross negligence by sharing OTPs with the scammers. And that it would have been impossible and unreasonable to expect Revolut to see the transactions as suspicious. The investigator also highlighted several gaps in Mr B's story, in a significant way. So it's unreasonable to hold Revolut liable.

The complaint has now come back to me to reach a final decision.

For ease of reference, I've included details below of the relevant activity on B's account from the day of the impersonation scam.

Time	Description	Amount
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9:42	Successful Apple Pay transaction using B's card details	-£1,600
9:44	Successful Apple Pay transaction using B's card details	-£20,000
09:45	Declined Apple Pay transaction using B's card details – card blocked	(£5,000)
09:46	Revolut's records show B's card was terminated and marked as compromised by user in the app	-
09:56	Declined Apple Pay transaction using B's virtual card details – card blocked	(£7,000)
09:59	Revolut's records show virtual card unblocked by user in the app	-
10:00	Successful Apple Pay transaction using B's virtual card details	£7,000.00
	<b>Total Losses</b>	£28,600

### 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.

In doing so, I've carefully reviewed Revolut's response to my provisional findings. It suggested I was wrong to assume Mr B didn't know he was facilitating payments from B's account, as B has set up Apple Pay before.

But I think it's likely that when Apple Pay was added before, B both wanted to set it up and would've gone through the entire process to do it. Whereas in the circumstances of this scam, Mr B was tricked into sharing details that allowed a fraudster to go through the process of their device to set up Apple Pay – and I think it's likely he was duped into sharing the information under the false pretence of stopping fraud on the account.

In light of the scam's differing and deceptive circumstances, I'm not persuaded that B's previous history with Apple Pay meant Mr B must have known he was facilitating payments. So this hasn't changed my mind that they're unauthorised.

Revolut has also highlighted where it agreed with the investigator's opinion before mine. But my role as an ombudsman is to reach a decision which, *in my opinion*, is fair and reasonable. That means I'm not restricted to any view the investigator reached before me.

And on the whole, I'm satisfied my provisional findings explained why I don't consider Mr B failed with gross negligence. I also acknowledged we don't have all the details, so I considered what *more likely than not* happened.

It follows that I've not changed my mind about what's a fair outcome to B's complaint. For completeness, I've included my provisional findings below.

#### Did B authorise the disputed payments?

- While we don't know exactly what happened, it's accepted that the disputed payments happened in connection with an impersonation scam. But I still need to decide whether they would be considered authorised. This is relevant as, in line with the Payment Services Regulations 2017 (PSRs), B would generally be liable for payments it authorises – whereas Revolut would be liable for unauthorised payments.
- The PSRs specify that authorisation depends on whether the payment transactions were authenticated correctly – and whether B 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 B consented to them.
- The PSRs specify how consent is given: it must be in the form, and in accordance with the procedure, agreed between B 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 B 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 Mr or Mrs B (as directors of B) would've needed to use their Apple device and its associated biometrics with the merchant to make the payments.
- It seems to be reasonably clear here that fraudsters set up Apple Pay using B's card details on their own device and made the payments. It follows that I'm not persuaded B used the agreed form and procedure to consent to these payments.
- I've gone on to consider whether B gave permission for someone else to go through these steps to consent to payments on its behalf.
- I recognise that, to set up Apple Pay, the fraudsters must have known B's card details – both its ordinary card details, and the virtual card details that appear to have been set up during the call and used for the last payment. As is common in scams like this, I think it's likely the fraudsters already had the original card details prior to the call – it's often how they appear so convincing. And given that Mr B recollects setting up a virtual card during the call, I think it's likely he shared these too. But I don't think he did so with the understanding they'd be used for payments. Instead, he recalls needing a virtual card so he could keep using the account while 'Revolut' supposedly sorted out the fraud.
- The fraudsters would've also needed one-time passcodes (OTPs) to complete setting up Apple Pay. While Mr B hasn't recalled it, I accept he must have shared them with the caller too – there's no other persuasive explanation for how this could've happened. But again, I don't think he understood that by doing this, he was facilitating payments being made. Given our experience of similar scams and Mr B's general recollection of the call, I find it more likely that he was deceived into doing so as part of stopping fraud on the account.
- So, taking into account the likelihood that some details were stolen and how Mr B was deceived into sharing other details, I don't think I could reasonably say he gave fraudsters permission to make payments using Apple Pay. It follows that I remain satisfied they're unauthorised.

*Is there a reason B ought not to be refunded for these payments under the PSRs?*

- I've gone on to consider whether there's a reason Revolut ought not to refund B for these unauthorised payments under the PSRs. Given the information shared and the actions taken within the app, I've considered whether Mr B failed with gross negligence to keep B's personalised security details safe and to comply with terms of the account. This is something which, if proven, would mean B wouldn't be entitled to a refund under the PSRs.
- Having considered the matter carefully, I'm not persuaded Mr B failed with gross negligence for the following reasons:
- Mr B received persistent calls from a spoofed number that appeared to come from Revolut. It also sounds like this was a well-planned, sophisticated operation, involving fake automated services that were part of 'upping the security'. The caller also knew some of B's sensitive information. Taking this all into account, I can see why Mr B trusted the call was genuinely from Revolut and the account was at risk. I think lots of people would've done.
- Given his belief he was speaking with Revolut and the purported urgency, I can also understand how Mr B was tricked into following the caller's advice and instructions. I realise some of the messages would've contained warnings and information that could've alerted him. But I can understand how, in the heat of the moment, Mr B would've relied more heavily on the caller's advice, who'd gone to lengths to establish their legitimacy.
- I've also reflected on how the text messages with the OTPs and notifications would've come through from Revolut – likely reinforcing Mr B's belief that he was genuinely on the phone with them.
- Finally, I've considered that Mr B must have taken steps to unblock the virtual card before the final payment went through. But I'm mindful that by this point, he'd have seen payments leaving his account – so it would've been a particularly stressful situation and at least plausible that this was connected to the supposed fraud they were trying to stop (as opposed to perpetrating). We also know from our experience dealing with similar scams that victims are often told they need to unblock the card to allow them to sort out the problem. With this in mind, while Mr B might have been careless, I'm not persuaded he acted with *very significant* carelessness – to show he failed with *gross* negligence.

### Conclusions

- It follows that, in line with the PSRs, I don't consider B can be fairly held liable for these unauthorised payments and Revolut must put things right – by refunding its losses from the payments alongside 8% simple interest per year to compensate it for the time it's been out of pocket.
- I've also got concerns about whether Revolut's intervention with these payments was appropriate given the fraud concerns it identified – and whether it should have taken further steps to reassure itself the payments were genuine. After all, two cards were added to Apple Pay, a card was reported as compromised and over £28,000 was sent in multiple card payments to a merchant categorised as a restaurant. But given that I've already upheld this complaint under the PSRs, I've not explored this further.

## **My final decision**

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

- Pay B the total of the disputed payments less any amount already recovered or refunded.
- Pay B 8% simple interest per year on this amount, from the date of the disputed payments to the date of settlement (less any tax lawfully refunded).

Under the rules of the Financial Ombudsman Service, I'm required to ask B to accept or reject my decision before 19 August 2024.

Emma Szkolar  
**Ombudsman**