

The complaint

P, a limited company, complains that Revolut Limited have unreasonably declined to refund transactions they didn't agree to make. They'd like their losses refunded.

P is represented by the directors, Mr and Mrs F.

What happened

P holds a business account with Revolut. In February 2024 Mr F receive a call from someone purporting to be from Revolut's fraud team, saying there had been an attempt to access P's account. He checked his email and he had received an email confirming this. He forwarded the email to the address provided by the caller through a messaging service.

After this, the caller spoke to Mr F about a payment made earlier that morning and Mr F was convinced the caller was helping him secure P's account. The caller then said they'd be sending Mr F a new bank card and advised him to delete the Revolut app from his phone.

When Mr F discussed this with Mrs F about an hour later, she thought this sounded unusual. They checked P's account, but only £9 remained. Twenty-six payments totalling £24,105.50 had been made, which they didn't recognise.

Mr F reported this to Revolut through the in-app chat. Revolut responded to say that they had forwarded the details to the relevant team. Later they declined to reimburse P, saying they had sent a one-time passcode (OTP) to set up a new device, and also verified it using a picture of Mr F. A second OTP would have been used to verify the creation of a new payee. They said that Mr F must have passed these along to the caller and said that by sharing these security details he had breached his responsibilities to keep these secure. They also said the beneficiary bank had confirmed that no further funds remained.

Dissatisfied with this Mr F referred P's complaint to our service. One of our investigators found that the receiving bank had returned £9,123 to Revolut in May 2024, but this hadn't been credited to P's account until August 2024.

The investigator thought the complaint should succeed. They didn't think that under the relevant regulations Mr F had authorised the transactions from P's account. They felt it was likely Mr F had given the fraudster codes and a picture of himself, which then allowed them to bypass security. But the investigator wasn't persuaded this amounted to gross negligence, such that Revolut could hold P liable for the transactions. The investigator recommended Revolut refund P the outstanding loss and add 8% simple interest per annum for the periods they were without the funds. They also suggested Revolut pay P £500 compensation for the delay in returning funds, and for service failings they identified.

This was accepted by Mr F on behalf of P. Revolut declined, saying they thought the emails and OTPs which had been sent provided enough warning that Mr F ought to have understood what was happening, and that funds would be moved out of the account. They felt by sharing this information Mr F had given consent for the fraudster to make payments. Revolut suggested a deduction should be made for negligence.

The investigator didn't think this changed the outcome. They were satisfied the payments were unauthorised, and that Mr F hadn't been grossly negligent in sharing the security information. They said that under the relevant regulations a deduction for negligence wasn't appropriate.

As no agreement could be reached the complaint was then passed to me to decide.

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.

Relevant considerations

The relevant regulations to authorisation of payments are the Payments Services Regulations 2017 (PSRs). The general principle here is that Revolut, as the payment service provider, can only deduct funds from the account if the payment request has been correctly authorised. If the payment is unauthorised, then Revolut will generally be liable for refunding it. There are provisions though for where the account holder has acted fraudulently; or failed to keep their personalised security credentials secure – either intentionally or with gross negligence.

The PSRs also allow for some of the provisions within the regulations may be disapplied, if the payment service user is not a consumer, micro-enterprise or charity. And I can see from Revolut's terms they make use of this for what they term "large corporate" customers.

But here I'm satisfied that P *is* a micro-enterprise – at the time of the transactions in dispute it had fewer than 10 employees, and a turnover of less than the equivalent of €2million. I've checked P's filings with Companies House for the two previous years, and they would also be under the employee and turnover limits to be considered a micro-enterprise. I've seen nothing to suggest that the opt-out for larger businesses to these provisions in the PSRs should apply to P in this case.

In their response to the investigator, Revolut have referred to a decision by a fellow ombudsman on a separate case. However, my role is to decide P's complaint based on its own merits, based on the individual facts of this case.

Is it reasonable to treat the transactions from P's accounts as authorised?

Broadly, the PSRs say that for a transaction to be authorised the payment service user will have to give their consent to the execution of the transactions in the form and procedure agreed between the payer and their payment service provider.

In this case, it seems more likely than not that the actual process of creating the payment transactions – entering the details in to Revolut's systems and requesting the payment be made – were carried out by the fraudster, rather than by Mr F or any representative of P. Revolut haven't argued this is the case. It seems to be accepted by both parties that Mr F likely shared security information with the fraudster, which then allowed them to access the accounts from a new device. This is the only reasonable explanation I can see for how these payments came to be.

Potentially payments can be made by an agent, or someone working on behalf of the account holder. Revolut have suggested that by sharing information Mr F had given authority to the fraudster to act as P's agent. But I don't agree. I've seen nothing to suggest Mr F was

willingly allowing a third party to make payments, or that his intention at any point was to hold out the fraudster as his agent. This isn't a situation where Mr F has allowed someone to operate the account, and they have gone on to abuse this trust.

I'm not persuaded that any authority – actual or apparent – existed for the fraudster to make these payments. So, on that basis I'm satisfied that it's not reasonable for these payments to be treated as authorised by P. I would say that the expectation under the PSRs would be that Revolut should reasonably refund them in full to P.

Is it reasonable for Revolut to hold P responsible for these transactions?

As mentioned above, there are certain scenarios where Revolut can still hold P liable for the transactions. The relevant section of the regulations says:

Regulation 77 - (3) The payer is liable for all losses incurred in respect of an unauthorised payment transaction where the payer—
(a) has acted fraudulently; or
(b) has with intent or gross negligence failed to comply with regulation 72 (obligations of the payment service user in relation to payment instruments and personalised security credentials).

There's no suggestion that Mr F or anyone else at P has acted fraudulently here, so I'm satisfied provision (a) doesn't apply.

Regulation 72 referred to in provision (b) details that P would be expected to take all reasonable steps to keep safe the personalised security credentials of their Revolut account. It's likely Mr F forwarded on an email and OTP that allowed the fraudster to access P's account. I'm satisfied these would be considered personalised security credentials under the PSRs.

He also sent a picture of himself to the fraudster – but I'm not persuaded this would be a payment instrument or personalised security credential.

I don't see there is an argument that Mr F intentionally gave over security details to allow the fraudster to make payments. Rather he was tricked in to doing so, by thinking he was taking steps to secure P's Revolut account.

So, the key consideration here is whether Mr F was grossly negligent with his personalised security details. The Revolut terms say they won't refund in the account holder has "carelessly failed to keep your Revolut account safe". But I see that this is at odds with the PSRs.

The Financial Conduct Authority's guidance document for the PSRs 2017 says "...we interpret "gross negligence" to be a higher standard than the standard negligence under common law. The customer needs to have shown a very significant degree of carelessness."

In case law Mance J wrote in *Red Sea Tankers Ltd v Papachristidis (The "Ardent")* [1997] –

"Gross" negligence is clearly intended to represent something more fundamental than failure to exercise proper skill and/or care constituting negligence... as a matter of ordinary language and general impression, the concept of gross negligence seems to me capable of embracing not only conduct undertaken with actual appreciation of the risks involved, but also a serious disregard of or indifference to an obvious risk.

I see that gross negligence is a higher standard than the “carelessly failed” test applied in the Revolut terms. It’s also worth noting that Mance was considering a commercial dispute in the above quoted judgement. I’m not persuaded that it is reasonable to draw any significant distinction between what would be considered grossly negligent for an individual, or a micro-enterprise such as P.

Revolut have said that there appears to be two points of compromise – the email to confirm login and the OTPs to set up a new device, and then a new payee. Turning to the email first, Mr F was under the impression he was speaking to Revolut and was asked to forward the email to a realistic looking email address. When this didn’t seem to work, he was given another email address to try. In hindsight, this does appear odd, as it’s not clear why the business would require a copy of an email they’d sent themselves. But in the context of being led to believe P’s account was in imminent danger, I can see why Mr F may not question it at the time. Both email addresses mentioned Revolut and seem plausible.

The contact method of phone and messaging service – which Revolut did not use to contact their customers – may trigger some concern in Mr F. But the use of such services is common in financial businesses, and I don’t see that Mr F would reasonably have seen this as particularly unusual.

Revolut have argued that the email itself contained a warning not to forward it on to anyone. But looking over the chat history between Mr F and Revolut where he reported the scam, I can see he was asked to provide a screenshot of the email. The screenshot at the time does not contain a warning not to forward the email on. I’m not persuaded that this warning was present in the email Mr F received, and it’s unclear why Revolut are now claiming it was. That the fraudster knew the email would have been sent would also have helped persuaded Mr F that he was genuinely talking to Revolut.

Similarly, the OTP to verify the new device could reasonably be seen as a way to verify they were speaking to the right person. I can see why Mr F would share this in the circumstances.

The OTP to set up a new payee the wording is clearer in that a payment would be made and gave details of the device being used. From this I agree Mr F could reasonably have questioned what was happening.

But I’m also minded that Mr F was convinced at the time he was speaking to Revolut directly and was taking actions to protect P’s account. So, any reassurance he would have sought would likely have come from the fraudster who had already built trust with him. I’d agree that ignoring the body of the message describing a payment was negligent. But in the context of a false sense of urgency, as well as a seemingly legitimate belief he was talking to Revolut, I don’t see that he has disregarded such a clear and obvious risk that a reasonable person would not have proceeded.

Taking into account everything we know about how the scam unfolded, I’m not persuaded that Mr F’s actions reach the standard of gross negligence. For this reason, I don’t see Revolut have been reasonable in declining to refund P for their losses.

Revolut suggested a deduction for contributory negligence – but the PSRs are clear that in the case of unauthorised transactions the fund should be in full. I don’t see that that it would be appropriate to make a reduction in the award. It would be appropriate to award 8% simple interest per annum on the losses for the period P was without use of these funds.

Handling of the fraud report and return of funds

I'd expect that on receiving a fraud report Revolut would contact the receiving bank at the earliest available opportunity to see if any funds could be returned.

In this case the receiving bank says the first they received word of the fraud was on 15 February 2024, although Revolut say this was done the day before. In any event this was over a week after Mr F had initially alerted Revolut to the fraud. The receiving bank has shown our service that the funds were passed on within two hours of receipt.

Given that Mr F first reported the scam about an hour after the last payment, I'm not persuaded this delay was necessarily a missed opportunity to prevent the funds being moved on. The timing is tight, and Revolut would still need to understand what had happened and contact the receiving bank, who in turn would need to carry out their own processes. But I see that the delay shows that the fraud claim wasn't treated with a reasonable level of care or urgency.

Reading the chats during this time I can also see Revolut gave the impression that the receiving bank had already been contacted, by saying they were doing everything to recover the funds. This wasn't the case at the time.

The receiving bank later recovered £9,123 which was sent back to Revolut on 8 May 2024. But this wasn't credited to P's account until 18 August 2024 – and only after intervention by our service. Revolut haven't provided a reasonable explanation for this delay.

I can see that this whole series of events has had a detrimental impact on Mr F. But the complainant here is P – a legally distinct identity to the directors of the business. I can't consider any award for the distress or inconvenience caused to Mr F personally, just the impact on P directly. But I see that the delay in returning the funds to P will have caused unnecessary disruption to the running of P's business.

Mr F was regularly chasing updates, which will have taken him away from the day-to-day running of P. While it's right Revolut be given time to investigate. But it's not clear to me what investigation was taking place in the period before the receiving bank was contacted. Or why after it was confirmed that the funds had been dispersed it then took Revolut several more days to decline the claim.

I'm not persuaded that Revolut handled P's claim reasonably, or in a timely manner. And as mentioned above I don't see that the decision to decline the claim was reasonable, or in line with the obligations placed on them by the PSRs.

Most of the impact on P here will be down to the actions of the fraudsters, and I can't reasonably say Revolut should be responsible for that. But I'm satisfied that Revolut's poor handling of this claim has had a disruptive impact on P's business. It would be appropriate for compensation to be paid to reflect the impact of this. And having considered the circumstances, I see that £500 would be an appropriate amount.

Putting things right

To resolve this complaint Revolut should refund:

- Refund the remaining losses to P
- For the returned £9,123 they should add 8% simple interest per annum from the date of loss to 18 August 2024
- For the remainder they should add 8% simple interest per annum from the date of loss to the date of settlement

- Pay P £500 compensation

If Revolut considers that HM Revenue & Customs requires them to deduct tax from the interest awards, they should tell P how much has been deducted. They should also give P a certificate showing this if P asks for one, so it can reclaim this directly from HM Revenue & Customs, if appropriate.

My final decision

My final decision is that I uphold this complaint and direct Revolut Ltd to settle it as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 20 January 2025.

Thom Bennett
Ombudsman