

The complaint

Mr G complains that HSBC UK Bank Plc (HSBC) won't refund payments which he says were taken from his account without his authority.

What happened

In early 2023, Mr G was introduced to someone I'll refer to as M. Mr G says he heard about M at work, and had been told they could help with "all kinds of documents". Mr G says he has back problems and was looking to quit work, so asked M to help him apply for universal credit. M told him he was eligible to claim and that they could help with the application. Mr G agreed to make two payments of £100 to M (although the payments went to an account in another name) in mid-January 2023.

Mr G says M then called him to say his documents were almost ready, but they needed to use his registered phone to make a call to finish the claim. Mr G says he accepted this so let M use his phone, although he had questioned M when he saw they weren't making a call. M said they'd been able to sort out the issue online and returned the phone.

A few hours later, Mr G saw a number of payments leave his HSBC account. Some were sent to the same account Mr G had paid previously, but some also went to a different account. In total, over £10,000 was taken.

The next day, Mr G reported the payments as unauthorised. But HSBC didn't agree to refund him. It said this was due to the level of security it had in place – and, having spoken to Mr G about what happened, it didn't appear there was an opportunity for someone to have got hold of his security details without his knowledge.

Then in March 2023, some further payments were made from Mr G's account. Some were flagged, and HSBC called the number it had on file for Mr G. The person who answered confirmed the payments, saying he was sending money to his sister and cousin. Over £500 was taken. Mr G says this also wasn't him, so he disputed the payments.

HSBC didn't agree to refund him. It said it had confirmed the payments over the phone. And after the first bout of disputed payments, it had also received an email from Mr G saying to cancel the dispute as it was an error; he'd since found out his wife was buying him a car as a surprise.

Mr G says that, when he visited branch, he found another device had been added to his account – and that device had been used to make all the disputed payments. At the same time, the phone number and email address on the account had been changed. He says this explains how M had been able to impersonate him and make these payments.

Unhappy that HSBC wouldn't refund him, Mr G referred his complaint to our service. Our investigator didn't uphold it. She thought he must have shared his details with someone in order for them to make the payments, so considered them authorised.

Mr G appealed the investigator's outcome so the case was passed to me. He maintained he hadn't made the payments. He said he had reported the incident to the police – and wouldn't have done this if he had made the payments.

I contacted both parties for further information. I asked HSBC for more information about the payments. While it didn't provide all the information I asked for, its response confirmed another device was added to Mr G's HSBC account, and his phone number and email address was changed, on the day he says he lent his phone to M.

I asked Mr G for records of his contact with M, along with records from the police about what he had reported. Mr G provided me with some messages between him and M, but said he couldn't provide any more as he no longer has access to the social media account they contacted each other on – and also no longer has the phone he was using at that time.

Mr G provided a police reference number and images of some police correspondence – but not his statement. He said the police won't provide this to him while his case is ongoing.

The correspondence Mr G provided also included a letter from November 2023 in which the police said they had been trying to contact him and would close the investigation if they didn't hear back. I asked for correspondence confirming the investigation is still ongoing. Mr G said I could call the police officer, but he couldn't provide anything in writing.

I then proceeded to issue my provisional decision, explaining why I was minded to conclude HSBC should refund Mr G for the disputed payments from March 2023 – but not those from January 2023:

First, I'll explain my position regarding the January 2023 payments. Mr G disputes making them. So, in line with the relevant regulations – the Payment Services Regulations 2017 (PSRs) – it's down to HSBC to first of all show they were authenticated properly. That essentially means it must show the correct payment process was followed. I'm satisfied it's done so.

However, whether the payments are authorised comes down to whether Mr G consented to them. Consent has a particular meaning in the PSRs. It must be given in the form, and in accordance with the procedure agreed between Mr G and HSBC.

In practice, that means Mr G consents to a transaction if he completes the agreed steps to make a payment. But it would also be deemed authorised if the agreed steps were completed by someone acting as an agent for Mr G. If someone is deemed an agent of Mr G, the payments they made would likely be considered authorised even if he didn't ask the agent to make them.

On Mr G's own testimony, it's clear the first two payments (totalling £200) were completed by him, and so were authorised. But he says the other disputed payments in January 2023 weren't completed by him, or anyone acting with his authority.

Based on the information HSBC has provided, it does appear the transactions were completed on a newly-added device which Mr G hadn't previously used. But – in order to add that device to Mr G's account, it wouldn't be enough that M (or someone else) had access to his unlocked phone, as he's suggested. They would also have needed access to his mobile banking and/or his security details.

Mr G maintains he didn't share any security details or give anyone access to his mobile banking app. I did ask him for further records of his contact with M, and the police, to back up his account of what happened. But most of the messages he has provided postdate the January 2023 payments – and there appear to be gaps in the correspondence.

Mr G also hasn't provided his police witness statement or other evidence to show what he told the police – or to show what stage their investigation is at. I've explained to Mr G that it's not my role to request evidence on his behalf, and that I've seen many other cases where consumers have been able to provide statements and other correspondence regarding an ongoing police investigation.

While I appreciate the reasons Mr G has given for why he can't provide anything further, in the absence of this evidence, I'm not persuaded by his explanation. I don't think it's plausible M could have added the other device without Mr G granting further access. So, I think these payments must be treated as authorised. While he may not have agreed to the payments in advance, I think his likely actions meant that M was given agency to act for him – meaning the payments would be deemed authorised.

However, Mr G did call HSBC the next day to dispute the payments. I've asked HSBC why it therefore didn't remove the newly added device used to make them. Its response was: "Unable to give a reason for this".

I do think that, by reporting the dispute, Mr G was taking steps to remove M's access/authority on his account. Yet HSBC didn't take reasonable steps to secure his account at that point. In those circumstances, I think the later payments made using the new device – in March 2023 – should be treated as unauthorised. Whatever steps Mr G took to grant M agency had been revoked.

HSBC says it spoke to Mr G at the time the payments were taken in March 2023. And he also emailed to withdraw his claim for the January 2023 payments. But that email appears to have been sent from the new address added in January 2023. I consider Mr G's allegation that this was M impersonating him plausible and consistent.

Similarly, HSBC has provided the March 2023 call. But it appears likely it was from the new phone number – which Mr G has consistently denied is his. I asked HSBC for a comparison call to show why it thinks this was Mr G. It didn't provide one. I'd also point out M has the same nationality as Mr G, so they are likely to have similar accents. So, I don't find this evidence persuasive.

The gap between the payments does look a bit strange. But then again, looking at when the other device accessed the account, it does appear plausible to me this gap could be due to M gaining access to the account and seeing funds had recently been paid in. I note there was also an attempted loan application around this time, which I think adds credibility to Mr G's allegation – as it appears characteristic of a fraud attempt.

On balance, I therefore consider the disputed payments from March 2023 to be unauthorised. And I don't think HSBC has grounds to deem Mr G liable under the PSRs. It can do so if the fraud occurred due to an intentional or grossly negligent failure by Mr G to comply with his obligations as a payment user, if that failing allowed the fraud to occur. But, as Mr G took steps to secure his account by reporting his dispute, and HSBC failed to take reasonable steps that would have prevented the later payments, I don't think those provisions give HSBC fair grounds to hold Mr G liable in these circumstances.

For those payments (from January 2023) which I have deemed authorised, I've also considered whether there are other grounds to hold HSBC liable. On the explanation provided, I don't know enough about the circumstances of what Mr G understood he was doing, or what steps he took, to conclude HSBC should refund his loss.

For example – if the payments were made as a result of an authorised push payment (APP) scam, then they may be covered by the Lending Standards Board's Contingent Reimbursement Model code (the code). But an APP scam has a specific meaning under the code. One such condition would be that Mr G thought he was paying for legitimate purposes.

From what Mr G told me about his dealings with M, it's unclear whether that would apply here. He says he thought he was eligible to apply for universal credit due to a back injury. But when I asked him if he'd sought medical treatment for this, or documentation for his claim, he wasn't able to provide anything. So, again given the limited information I have about Mr G's police report and his contact with M, I'm not persuaded the code applies.

Even if I got to a point where I thought the code did apply, there are exceptions to when a bank would need to refund payments covered by the code. I'd need to consider whether Mr G had a reasonable basis for believing the situation was legitimate – and whether HSBC failed to meet its duties in such a way that affected his loss. Again, it's not clear on the evidence provided that Mr G would be entitled to a refund.

I've also considered whether HSBC ought to have been able to recover some of the payments. I'm not persuaded it should and could have done this. We know that fraud/scam funds are generally moved on very quickly to avoid any recall attempts. Furthermore, I can see why HSBC didn't immediately attempt recovery. At the time, Mr G confirmed he hadn't been scammed. And I agree with its overall conclusion that the payments should be treated as authorised.

I appreciate it will be disappointing for Mr G that I'm not minded to direct HSBC to refund him for the majority of his loss. But having carefully considered all the information provided, and having given both parties opportunities to provide relevant evidence to support their position, I'm not convinced HSBC should be held liable for the January 2023 payments.

I invited both parties to provide any further evidence or arguments. HSBC replied to confirm it accepted my provisional findings. Mr G said he hadn't been able to get anything further from the police. He provided some further medical records. Along with the letter he originally submitted to HSBC (which I had already seen).

Mr G also provided a call recording in a different language. He has explained this comes from a video his partner took the day after the January 2023 payments. He says in it, M proposed they should go to Mr G's bank, and that Mr G should say he made the transfers, in order to unblock the account. And M admits they got into his HSBC app.

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've come to the same overall conclusions as I did in my provisional decision – largely for the same reasons, which are set out above and also form part of my final decision. So, I'll focus here on responding to the further evidence/points Mr G has raised in response to my provisional decision.

In my provisional decision, I said I didn't have a plausible explanation for how M (or another unauthorised person) could have got access to Mr G's mobile banking without him granting further access. Having reviewed all the further information provided, I still don't have a plausible explanation for this. So, that is the key reason why I haven't changed my decision.

Mr G has now provided a recording which he says his partner took the day after the January 2023 disputed transactions, of him talking to M. I'm conscious this wasn't provided earlier, despite my request for any records of contact with M, and that it isn't in the video format which Mr G says it was originally captured in.

The recording is also in another language. I've considered whether I need further information about this to reach a fair decision. On balance, I've decided I don't. That's because I've relied on what Mr G has told me about when this recording was taken and what was discussed. And in doing so, I'm not persuaded it leads me to a different outcome.

While Mr G says M talks about getting access to his banking app, it still remains unclear to me how M could have done this without Mr G taking some steps to authorise M to act on his behalf. I've outlined the steps involved in setting up mobile banking on another device – and I still don't consider there to be a likely explanation for how M would have been able to do this without Mr G sharing anything further.

It also seems somewhat unusual that if M had found a way to take this money without Mr G granting them *any* form of access, that they would then admit to this – whilst also suggesting visiting a branch *with* Mr G to help unblock the account. If it had been unveiled that M had taken the money, despite Mr G not sharing any details or granting any access, it seems unlikely M would then consider it wise to propose ways to supposedly help Mr G, or would volunteer to go to the bank with him.

In saying all this, I do think Mr G was tricked in some way by M. But that in itself doesn't mean HSBC, as his bank, holds liability. For the reasons given in my provisional decision, I'm still of the view that the January 2023 payments must be treated as authorised under the PSRs – even though I accept Mr G plausibly didn't know M would be making these payments.

I appreciate Mr G says he hasn't been able to get anything further from the police. So, I must proceed on the basis of the information I do have available to me. I've already covered in my provisional decision why I think the lack of clear records about the status of the police investigation, and the specifics of what was reported to them, has a bearing on my understanding of what happened.

Mr G has provided photographs of medication he has, along with records of some medical testing he had done several months after the events of this complaint. I'd clarify that I don't dispute that he was suffering from back problems. But the point remains that, when I asked him for any records he was planning to use to support his universal credit application, he didn't provide anything. So, I've not departed from the position I took in my provisional decision that Mr G isn't entitled to reimbursement under the terms of the CRM code.

Overall, for the reasons given (including those given in my provisional decision, as set out above), I consider it fair to expect HSBC to refund Mr G for the March 2023 payments. I think Mr G had taken steps to remove M's authority by that point, and HSBC probably should have been able to prevent them from occurring. But I don't think it would be fair to direct HSBC to refund him for the January 2023 payments.

My final decision

For the reasons given above, my final decision is that I uphold this complaint. HSBC UK Bank Plc must refund Mr G for the disputed payments from March 2023. It should also pay 8% simple interest on this amount from the date of payment to the date of settlement (less any tax lawfully deductible).

HSBC UK Bank Plc must pay this compensation within 28 days of the date on which we tell it Mr G accepts my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 23 April 2024.

Rachel Loughlin
Ombudsman