

The complaint

Mr O complains that HSBC UK Bank Plc won't refund payments he says he didn't make from his account.

What happened

Mr O disputes eight online payments which total £2,554. He says that these were made by someone who lived in the same hostel accommodation. That person transferred the money to his own account and Mr O says that he didn't authorise this.

HSBC said it wouldn't be refunding the money. The payments had required Mr O's security information and it didn't consider they were possible without his knowledge.

Our adjudicator didn't recommend that the complaint be upheld. Mr O had told him that the neighbour had often come over to help him. And that he managed to obtain his phone and make the payments. Mr O said that the PIN on the phone was the same as that for his online banking. Mr O said he had lent the third-party cash but not allowed any payments. And that he didn't check his account online and so didn't notice the payments until 20 October 2022 when he reported this to HBSC.

Our adjudicator said that a new device had been registered to use online banking on 6 October 2022. The first two disputed payments were made using this. The rest were made with Mr O's phone. Registering the new device required a one-time passcode sent to the existing phone to be entered online. Mr O had also made genuine payments online using his phone between the disputed ones. So, our adjudicator thought he would reasonably have noticed the disputed ones before he says. Also, he couldn't see why his neighbour would have needed to have that phone if he had access through the newly registered device. It had been Mr O's decision to keep the PIN on the phone in a discoverable way. If he hadn't kept his information secure that enabled his neighbour to make the payments. There was no evidence provided of this being reported to police and his neighbour being implicated as Mr O said.

Mr O didn't agree and wanted his complaint to be reviewed.

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 need to take into account the Payment Services Regulations 2017 in considering this complaint. These state that a payment can only be authorised if it was consented to. So, it's not enough for it to be authenticated, say with security information. And if the payments weren't authorised Mr O wouldn't generally be responsible for them.

So, I will be thinking about the following areas in looking at this complaint:

- What is the most likely explanation of what happened to the security details used for these payments?

- Did Mr O authorise the payments on the account, which could have been by allowing someone else to use the account?

I won't be able to say *exactly* what happened and I'm thinking about what is *most likely*. I'm satisfied that the payments were authenticated. They were made each time following a log on using the HSBC phone app. And this required Mr O's security information and the use of a registered device. I note as our adjudicator says that a new phone was registered to the account on 6 October 2022 and used to make payments that day of £100 and £50. The audit information shows that the security information and a one-time passcode were required for this. All other payments were made with the existing device Mr O had.

The issue is whether he consented to the payments. I agree with our adjudicator that if a third party had somehow been able to register a new device then it's unclear why he'd use Mr O's other device for the further six payments. I note that there was a gap between the first two payments and the next ones which occurred on 13 October 2022. That was the day that Mr O received large credits of over £10,000 to his account. It's unclear how a third party would know about that. While a disputed payment of £300 was made that day, there was a substantial balance available. It's likely someone with such access to his account would take as much money as soon as possible as they risked discovery. Mr O made significant genuine payments during and after the disputed payments online. This would mean that a fraudster would need to be able to take and then return his phone several times. Mr O reported what had happened when there was it seems £30 left in his account. The disputed payments were a part of the amount that had been paid out by then.

I don't have any evidence to support what Mr O says about his neighbour being implicated and he doesn't have any police report. He says his neighbour was arrested by police with his phone on him. I appreciate Mr O says he's had mental health issues. He was at the time able to operate the account himself and I'm not persuaded on the evidence that he wouldn't be reasonably aware of the payments. Or that the payments were only possible because of any particular vulnerability, and which say prevented him doing anything about them any earlier.

Having balanced all the factors here I don't find it most likely that Mr O didn't consent to the payments. This could have involved him allowing a third-party having access to his account. And if he'd done that I'm afraid he was fairly responsible for what that person subsequently did and which I know he says led to conflict between them.

I appreciate the amount at stake here. Mr O has referred to taking legal action and he's free to do so subject to any relevant time limits if he doesn't accept my decision.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 13 September 2023.

Michael Crewe
Ombudsman