

The complaint

Miss J complains that HSBC UK Bank Plc (HSBC) is holding her liable for payments to two gambling companies (B1 and B2) which she says she didn't authorise.

What happened

The details of this complaint are well-known to both parties, so I won't repeat them all again here. However, for context, I have set out a timeline of key events leading up to this complaint being referred to our service:

- March 2019: In-person card payments are made from Miss J's account to 'W' – a betting shop. These payments continue up to March 2020.
- April 2019: Online card payments are made from Miss J's account to 'S' – a betting company. These payments continue frequently up to October 2019.
- July 2019: Miss J disputes a payment to a (non-gambling) merchant. She is sent a new debit card following this.
- January 2020: Shortly after benefit payments are received into Miss J's account, some online card payments are made to B1, another betting company. Further payments are sent to B1 in March 2020, September 2020, and December 2020.
- February 2020: Miss J refers a complaint to us about the payments to S. She says she didn't authorise them. During the course of our investigation, Miss J tells us she and her son, who has complex health needs, are the victims of abuse by her ex-partner. She says her son took a picture of her card on his phone and had access to her laptop – and used those details to make the payments to S without her knowledge or permission. She also said the payments to W were part of her dispute.
- August 2020: An investigator here looks into Miss J's complaint about the payments to S and W. In brief summary, he concluded the payments were likely authorised by Miss J, so didn't think HSBC should refund them. He awarded compensation for poor service – relating to HSBC failing to make reasonable adjustments for Miss J. This view was accepted by both sides in September 2020. It appears Miss J still disputed making the payments. But she told us she was accepting as she wanted to move on.
- November 2020: Online card payments are made to 'B2' – another betting company. These continue regularly until Miss J's account is closed in May 2021.
- May 2021: Miss J discloses to HSBC that she is the victim of domestic abuse. It appears there is some contact about her ex-partner using her account for gambling transactions. HSBC says it can give her a new basic bank account with new online access, so her ex-partner won't be able to get access. Miss J opts to close the HSBC account and opens a new account with another bank (T).
- June 2021: Miss J contacts HSBC to dispute a card payment (not connected to gambling) and some ATM withdrawals. To help identify the disputed payments, HSBC reads out the transactions on the account from February 2021 – including a number of payments to B2. HSBC asks Miss J if she was aware of the gambling payments, and she confirms she is.

- June to July 2021: a high volume of payments is sent to B2 from Miss J's account with T. These often correlate with payments into the account from an individual I understand to be her son. She then receives a significant number of fraud refunds. While T hasn't confirmed this, the amounts suggest they relate to the B2 payments. She continues to use the account and there are no further gambling payments.
- August 2021: Miss J contacts us to further dispute the payments to S. She says she thought they had been made by her son but has since found out he was being groomed. Our service contacts HSBC about this. It responds to say we have already considered this complaint. It also points out that, following her complaint to us, further gambling payments (to B1 and B2) continued until the account was closed in May 2021 – and says it hasn't received a complaint about those transactions. It seems this eventually leads to a complaint being raised with HSBC about the payments to B1 and B2.
- July 2022: We let Miss J know that HSBC will be considering her complaint about the payments to B1 and B2 and will be responding to her directly. T also closed Miss J's account around this time.
- August 2022: HSBC issues its final response explaining it doesn't agree to refund the payments to B1 and B2. Unhappy with its response, Miss J refers her complaint to our service.

Our investigator ultimately didn't uphold Miss J's complaint. They said the account appeared to have been maintained and checked frequently. Yet Miss J didn't originally dispute the payments to B1 and B2, despite disputing other payments from/during that time period. They also noted credits from B1 and B2 remained in the account, and there were other, undisputed, gambling transactions on the account. So, they thought the payments were probably authorised. And they didn't think HSBC had cause to view them as suspicious as they were in keeping with the usual account activity.

Miss J appealed the investigator's outcome. She disputed that the account was being maintained well. She provided account statements which she says show all the transactions she has disputed with HSBC. This included not only more gambling transactions, but payments to non-gambling related merchants; phone contracts; loans; and ATM withdrawals.

Miss J said she didn't feel her circumstances or evidence has been properly considered. She mentioned the issues we looked into previously regarding the adjustments she requested from HSBC, and said it was still discriminating against her.

The case was then allocated to me. After speaking to both parties, I issued my provisional decision in January 2024 explaining I wasn't minded to uphold the complaint:

I want to start by make the scope of the complaint I am considering clear. What I am looking at is Miss J's allegation that HSBC is unfairly holding her liable for payments to B1 and B2 which she didn't authorise. That is the complaint she referred to us, and the issue addressed in the final response HSBC issued to Miss J in response.

I know Miss J has raised other complaints with HSBC, such as about the service it provided in relation to reasonable adjustments she has requested. This was addressed in the previous case our service considered. There may have been further complaints about connected issues since then. But those are separate to the complaint I'm considering and haven't been referred to us.

Miss J has sent us annotated statements setting out additional payments which she says she didn't make, and which she has disputed with HSBC. I haven't seen records of these being disputed with HSBC, nor of her complaining in response to a fraud claim regarding those payments. Furthermore, I can't see that any such complaint was referred on to our service. If Miss J wishes to dispute further payments, she will need to do that with HSBC directly in the first instance; I don't have the power to consider a complaint about them.

With all of that said, I'll go on to address the merits of Miss J's complaint about payments to B1 and B2.

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'm not minded to uphold it.

I appreciate this will be very disappointing for Miss J. It's not a conclusion I've reached lightly. I know Miss J has expressed concern about what information the investigator considered. I want to reassure her I have access to, and have reviewed, all the information she has sent our service (including the information she sent to the previous investigators).

Alongside this, I have also fully reviewed our file for her previous complaint, regarding payments to S and W – as that also contains information relevant to this complaint. I have taken all this information into account when reaching my decision.

Miss J has sent us extensive submissions. I'd like to thank for providing these, as I recognise this will not have been easy to do – both in terms of the work involved, and the sensitive nature of some of the information she has disclosed.

As above, I have fully reviewed this information, which has been useful in determining what was happened. However, I won't be responding in the same level of detail. Rather, I'll be focussing on the key issues relevant to the decision I have reached. If I don't mention a particular point or piece of information, that doesn't mean I haven't considered it. It just means I don't consider it necessary to reference in order to explain my decision.

With that said, I'll go on to explain my reasons for my decision.

In line with the Payment Services Regulations 2017 (PSRs), the starting position is that Miss J is liable for payments she authorises – and HSBC generally would be liable for unauthorised payments taken from her account. The PSRs specify that authorisation depends on whether the payment transactions were authenticated correctly – and whether the account holder 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). The dispute is over whether Miss J consented to them. She says they were made by someone accessing her card details, and adding them to gambling accounts that weren't used or set up by her, without her permission.

The PSRs go on to specify how consent is given. It must be in the form, and in accordance with the procedure, agreed between Miss J and HSBC. In practical terms, that means Miss J consents to a payment if she completes the agreed payment steps – such as entering her card details on a merchant's website. Or if someone else (an agent) acted on her behalf and used those agreed steps.

Agency can be created not only by the bounds of the actual authority granted by the principal. But also by the acts of the agent which appear to have been made with the principal's authority. If Miss J allowed someone to use her card, that individual would be treated as her agent and the payments would be considered authorised – up to the point she took steps to revoke their access/authority (such as notifying her bank to block the payments or cancelling her card).

In order to uphold this complaint, I'd need to be persuaded, on the balance of probabilities, that the payments were made without Miss J's consent.

It does seem unlikely that someone would have been able to make these payments, over such a prolonged period, without Miss J's agreement. It appears she was using the account in between the disputed transactions. And the payments to B1 and B2 often occur after credits are received – suggesting whoever made them had a high level of awareness of the account.

When credits were received from B1 and B2, they remained in the account. That does seem strange if they were winnings from payments done by someone other than Miss J – as it meant the funds were available for her to use.

I've also spoken to T about the account Miss J opened with them after closing her HSBC account. I'm conscious this occurred after HSBC offered to place restrictions on the account to prevent further gambling transactions. Miss J opted to change her account instead.

The statements from Miss J's T account show further payments were sent to B2. If, as Miss J has told us, she didn't gamble herself and didn't hold the account with B2 – that means the unauthorised person would also have needed access to the card for her new account. Like with the HSBC account, the payments to B2 also occurred in amongst general spending, and often followed credits into the account.

Bearing in mind we know Miss J was aware of the gambling transactions made from her HSBC account prior to opening her T account – as she discussed them with HSBC – I do question how such a similar pattern could occur again without Miss J's agreement.

I've considered what Miss J has told us about her circumstances at the time and how she believes these transactions occurred. There does appear to be some confusion and inconsistency from her about this – including over what payments are in dispute.

As I've covered off, I only have the power to consider the payments to B1 and B2. But I do consider it relevant context that Miss J has now said there are a lot more payments which she disputes making. Given how extensive these are, it gives me cause to question what Miss J has told us about the dispute, and how likely it is that someone would have been able to use her account in this way without her permission.

Miss J's explanations to us about what happened appear to have changed over time. For example, when we looked into her previous case, Miss J said she never gambled, and the payments to W were unauthorised. But when we told her they were made using chip and PIN in branch (rather than being online payments), she said they were done by her – and that she had been playing the lottery. She now says she did make one payment to W – but that wasn't her playing the lottery, it was done under coercion. It's not clear to me why Miss J's explanation has changed so much on this point.

I asked Miss J if she had been in touch with B1 and B2 about the transactions, and to provide records of her contact. While she didn't provide contact records, she did confirm she had spoken to the companies. She provided the address the accounts were registered to – which she says isn't somewhere she lived. But it matches letters Miss J has provided, addressed to her (from 2019) as part of her submissions. So, it's unclear to me why Miss J is suggesting the address isn't connected to her.

In saying all of this, I am mindful Miss J was clearly in very difficult circumstances when a lot of this happened. That may account for some of the discrepancies and confusion in her explanations over time, as she may not have felt able to fully divulge everything from the get-go. However, there are some changes and inconsistencies which I struggle to understand the reason for.

I am also mindful that, on one occasion, Miss J told our investigator she was aware of the payments at the time – but felt powerless to stop what was happening. To me, this suggests she may have allowed someone else to use her card. At the least, it appears she was aware someone else was using her card – but took no steps to revoke their access, such as by reporting the dispute to HSBC at the time or changing her card.

By letting someone else use her card – even if due to being coerced – that person would be considered an agent acting with Miss J's authority. So, under the PSRs, she would be presumed liable in the first instance. Having carefully weighed everything up, I do think it's more likely that Miss J either authorised these payments herself, and/or allowed someone else to use her card to make them.

While the starting position is that Miss J is liable for authorised payments, I am mindful of what she has told us about the circumstances she was in at the time. So I have considered whether there is any other reason why it would be fair and reasonable to hold HSBC liable for all, or some, of the loss she is claiming for.

There were a lot of gambling transactions being made on the account. While I agree with the investigator that this didn't look unusual for Miss J's account, I have thought about whether HSBC ought to have checked in to see if Miss J needed any support – and if so, whether that may have avoided some of these losses.

Overall, even if HSBC had reached out to Miss J at the time of the payments, I'm not persuaded it's likely this would have prevented any further losses. I'm conscious that, when Miss J reported her ex-partner had been using her account for gambling payments, she made it clear she didn't want to dispute them at that point. HSBC also put forward options to help prevent anyone accessing her account, but she opted to switch her account to another provider. Further gambling transactions then occurred on the new account she opened.

I am also mindful that we have been given different explanations of how these payments occurred – such as whether they were done by Miss J's ex-partner or her son. And I do still consider it credible they were completed by Miss J. Without more certainty about how these payments were made, I can't safely conclude HSBC would have been able to get to the bottom of what was happening. Nor that, in doing so, it would have prevented the transactions.

I'm sorry to disappoint Miss J, who I appreciate has lost out significantly in difficult circumstances. My role is to decide whether HSBC is at fault for what happened here. For the reasons I've explained, I'm not persuaded it is.

I invited both parties to provide more comments or evidence in response to my provisional decision. HSBC didn't provide anything further by the deadline I set. I've summarised the key points, relevant to my decision, which Miss J has raised following my provisional decision:

- She has asked me to get further information from HSBC about the account closure, as she says this was HSBC's decision. She says she asked for restrictions and didn't want a bank card linked to the account - but HSBC closed her account.
- She says HSBC did then call and offer her a new bank account with no card and the restrictions she wanted. But this was just before completing her account transfer. She also says she told her new bank not to issue her a card.
- Miss J has suggested she did want to dispute more transactions with us earlier, but her circumstances meant she couldn't do so.
- She says HSBC failed to make reasonable adjustments she asked for regarding her phone contact. Which has impacted what has happened since.
- Miss J says she has provided proof a serious crime was committed, in the form of police reference numbers.
- She disputes making the chip and PIN lottery transaction.

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'm decided not to uphold it. This is largely for the reasons given in my provisional decision – which are set out above and also form part of my final decision. I'll now focus on responding to the key points Miss J has raised in response to my provisional findings.

A number of these relate to issues which I have already explained I can't consider within this complaint. Such as the other transactions Miss J says she is disputing/has disputed (including the chip and PIN 'lottery' transaction considered as part of Miss J's previous case). And the issues she has raised around HSBC's reasonable adjustments. These don't form part of the complaint HSBC considered from Miss J and which was referred on to us.

So, while I understand the strength of Miss J's feelings about these issues, they don't have a bearing on the decision I am making here. But I have considered the points Miss J has raised about the circumstances of the HSBC account closure in May 2021.

While Miss J has suggested I get further information about this from HSBC – it's for me to decide what information I need to reach my decision. And I'm satisfied I don't need further information on this point in order to reach a fair decision about this complaint.

To start with, I'd point out the account closure occurred *after* the disputed payments I'm considering. So Miss J's request for restrictions, and not to have a bank card, didn't materially affect what happened in relation to those transactions.

Furthermore, I'd highlight that my timeline explained HSBC offered Miss J a *new* basic bank account in May 2021. This was in response to her providing information about her circumstances. So it does fit this may have involved closing her existing account. But that doesn't materially affect what I'm considering, given the dates.

It's also not clear to me why Miss J couldn't have taken up HSBC's offer, even if her account

switch had been initiated, if it suited her better. I'd also point out that I've seen records which make it clear a card was issued on the new account – and was used to make further transactions similar to those I'm considering here.

And while I'm not re-considering Miss J's previous complaint, I do consider her testimony regarding the chip and PIN transaction(s) relevant – as she now says she didn't authorise them. This appears a further contradiction in her explanation of what happened. I appreciate Miss J was in very difficult circumstances, which may well have affected her recall or what she has been able to disclose at various points. But overall, it does give me less confidence that her current explanation is the correct one.

I have considered the evidence Miss J has provided with her dealings with the police. These don't give a clear and complete record of the nature of the crimes she has told us about, to show how/whether they relate to the transactions I'm considering here.

Ultimately, I'm considering *HSBC's* liability, not that of the individual Miss J has told us perpetrated these crimes. I've already explained above why, even if the payments were made under coercion, HSBC wouldn't be liable under the PSRs – nor am I persuaded it ought to have been able to prevent her loss.

In all the circumstances, I don't consider it fair to direct HSBC to refund her for the payments to B1 and B2 which she says she didn't authorise.

My final decision

For the reasons given above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 1 March 2024.

Rachel Loughlin
Ombudsman