

## **The complaint**

Mrs M complains that HSBC UK Bank Plc didn't refund transactions she says were made without her authority.

## **What happened**

Mrs M had an account with HSBC. In 2022, a number of online banking payments were made from her account. This included payments into the account of a third party, and payments into an account in her name with another business.

Mrs M says she didn't authorise these payments. She says that two people who moved into her house stole her details and made the payments. She says these people set up the account in her name with the other business – and tricked her into providing relevant identity documents.

HSBC didn't refund the payments. It says the payments were made using online banking – and so thought Mrs M must have provided whoever made them with her security details. Dissatisfied, Mrs M referred the complaint to us.

I issued my provisional findings on 5 September 2023. I said that based on what I'd seen so far I didn't think the complaint should be upheld. I said I'd consider any further comments from HSBC or Mrs M by 3 October 2023.

In my provisional decision I said:

- The relevant regulations were the Payment Services Regulations 2017. A consumer should only be held responsible for payments made from the account that they made themselves: if a payment transaction wasn't authorised, the payment service provider must refund the transaction.
- But Mrs M can be held responsible for payments if she'd given someone else permission to use her account.
- Mrs M could also be held responsible for payments if she'd deliberately – "with intent" – or very carelessly – with "gross negligence" – failed to keep security details secure.
- As some of the payments took Mrs M into her overdraft, she also couldn't be held responsible for a loss arising from the use of a credit facility by another person not acting as her agent.
- With this in mind, I needed to consider whether Mrs M authorised these transactions and, if not, whether she should nevertheless be held responsible for these transactions.
- In the circumstances of Mrs M's complaint, I thought HSBC could do so.
- Some of the payments were made to an account in Mrs M's name with another

business. Mrs M said that she had no knowledge of this other account.

- But the other business said that to open this account Mrs M needed to record a video. She needed to look into the camera and say the words “My name is [Mrs M] and I want a [name of bank] account”. The other business had sent us a copy of this video. I was satisfied it showed Mrs M saying she wanted the other account.
- While I accepted that it was perhaps understandable that Mrs M wanted to distance herself from what had happened, this was plainly at odds with what she’d told us had happened. Although she’d explained that she’d been tricked into providing her identity documents, in the video she clearly said she wanted an account with the other business. This meant I didn’t find the rest of what she’d said persuasive.
- I accepted that Mrs M allowed two strangers to move into her home. I accepted they may have manipulated and took advantage of her. But I needed to be satisfied that Mrs M didn’t allow someone else to use her account.
- The payments were made from Mrs M’s account using her normal device and normal login credentials. Mrs M had suggested a number of ways this might have happened. She said the third party might have accessed her phone when she wasn’t looking. She says the third party asked her to leave her home while he did some cleaning and might have got access to her security details – which she says were written down in a drawer – then. She also says she pledged her phone at a pawn shop which the third party subsequently said he’d bought back.
- But given the video evidence, I didn’t find what Mrs M said persuasive. The transactions took place over two months – and so there was a huge risk that Mrs M would discover what was happening, especially as Mrs M told us she knew she was short on cash and that she’d noticed her statements hadn’t been delivered. It wasn’t clear why, having gone to some lengths to hide what he was doing, the third party would tell Mrs M he’d bought back the phone but wouldn’t give it back to her.
- I was also mindful that Mrs M said she’d become dependent on the third party more generally. It seems he was giving her instructions more generally about how to carry out her day-to-day affairs. This included interfering with a repair to her vehicle and claiming to advise her on legal action overseas in relation to a separate scam. Above all, I’m satisfied that Mrs M allowed the third party to set up the other account in her name with the other business. This demonstrated the degree of influence the third party had over Mrs M, and strongly suggested that by that point Mrs M had given the third party control over her financial affairs.
- With all this in mind, I concluded that Mrs M either gave the third party access to her cards and accounts – or made the payments herself on the third party’s instruction. This meant Mrs M can fairly be treated as having made these transactions, even if the third party, having been given access to the account, made payments Mrs M wouldn’t have made herself.
- Although Mrs M says another business had considered the same matter and refunded the disputed transactions, here I was only considering the actions of HSBC.

Mrs M has responded to the provisional decision with further information. HSBC hasn’t responded.

I’ve therefore reviewed the complaint afresh.

## **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've carefully considered the further information Mrs M has provided. But it doesn't change my conclusion.

On reflection, she thinks the third parties may have accessed her account by using her phone. She says her phone didn't have a password as her voice was her password. And she remembers one of the third parties using her phone and her having to take it off him.

She says she knew her payment cards had gone missing, and tried to contact HSBC but couldn't – the third parties had done something to her landline. And despite promising her that they'd sort things out, this didn't happen. She was aware she had no access to money – the third parties said they'd help her. And then they told her that they'd run out of money and that she needed to pawn her phone – but that this was OK as one of their parents would help get this back. During this period the third parties were deliberately keeping her away from other people – and may have drugged her.

She's also commented further on the account in her name with the other business. She says she was tricked into providing ID photos – she thought it was related to a passport application.

I have every sympathy with Mrs M and don't doubt she's had a very difficult time.

Here, though, I need to consider HSBC's obligations and whether HSBC needs to refund these transactions. As I said in my provisional decision, Mrs M can be held responsible for transactions she made herself or by someone else using the account with her permission.

While I've taken into account what Mrs M has said, the video evidence I've seen shows that she expressly agreed to the creation of the bank account with the other business. This explains how the other account was set up and how payment instructions were moved to that new account. I accept that Mrs M may have been taken advantage of by the third parties. But that doesn't change whether HSBC can now treat Mrs M as having authorised these transactions.

This means I don't uphold the complaint and I'm not going to tell HSBC to do anything further to put things right.

**My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 27 December 2023.

Rebecca Hardman  
**Ombudsman**