

## **The complaint**

Mr F complains that HSBC UK Bank Plc ('HSBC') won't refund a transaction he says he didn't make or authorise.

## **What happened**

Mr F says that at around 11pm on 30 August he noticed a transaction on his account for £8,500 that he didn't recognise. He was logging into his account to see if a credit had been received from a friend to help with a mortgage. As it was late, and Mr F didn't know how to contact his bank at that time, he waited until the morning to report the transaction to HSBC.

When Mr F reported the transaction, he confirmed the following details:

- He didn't know the recipient of the funds and the reference was 'WAGES' but he doesn't pay wages to anyone.
- He hadn't received any unusual emails, texts or calls and hadn't clicked on any links and shared his details.
- He hadn't shared any of his personal or banking details with anyone.
- He hadn't written down any security information.
- Nobody else had access to his phone and it was password protected.

HSBC said its investigation hadn't shown that a third party was involved in the transaction or could have known Mr F's security information to access mobile banking so it wouldn't be treating the transaction as unauthorised.

## *Our investigation so far*

The investigator who considered this complaint didn't recommend that it be upheld. He felt that the evidence showed it was more likely than not that Mr F authorised the disputed transaction so was responsible for it. The investigator referred to the fact that the transaction was made from a device Mr F had previously logged in on, Mr F's passcode was used to authorise the transaction and that no-one else had access to his phone or passcode. And Mr F logged into his account multiple times before reporting the matter to HSBC. Finally, the investigator said the transaction wasn't indicative of fraud.

Mr F didn't accept the investigator's findings and asked for a final decision, so the case has been passed to me to consider. In summary, he said:

- HSBC should have contacted the bank that received the funds.
- Mr F questioned why HSBC didn't call him or text him about the transaction given its value.
- He noticed the disputed transaction at night, and he checked the account lots of times because he was worried about his money. Also, a friend was due to credit his account with £3,000 to help with a mortgage.
- Mr F provided a screenshot from his mobile phone about installing a security update he says was from the time of the transaction.
- At the time a friend was fixing an old phone he had used for five years that had

details of accounts and emails. The phone had no SIM though as this was with Mr F. He got the phone back but uses a different one.

- He doesn't know the person his funds went to. The reference was wages, and he doesn't pay anyone wages.

### **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.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take in account relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

The relevant law here is the Payment Services Regulations 2017. Broadly speaking Mr F is responsible for any payments that he has authorised (either by making them himself or allowing someone else to) and he isn't responsible for unauthorised payments except in more limited circumstances.

Whilst I'm sorry to disappoint Mr F, I agree with the investigator's findings and so am not asking HSBC to do anything more. In reaching this conclusion I've taken into account the following:

- I have seen evidence to demonstrate that the payment was made from a device that was used to log into Mr F's mobile banking app from May 2022 onwards (which is when he said he registered his new mobile). The same device was also used to make payments after the disputed transaction. This was the only device used at the time of the disputed payment.
- There is no explanation for how a third party could have gained access to Mr F's mobile banking. To make a payment a third party would need to know Mr F's passcode to use his phone and would also need his security details to access online banking. The payment was authorised using a passcode in the same way previous payments had been, so a fraudster would have needed to know this code. Mr F has been clear that his mobile phone was with him and that he hadn't shared any information that would allow a third party to make a payment.

I note that Mr F originally said he had an old phone that didn't work and then as our investigation progressed, he said that he had given this old phone to a friend to fix so this could be how his details were obtained. But this still doesn't explain how a fraudster could gain access to Mr F's online banking. And no new mobile devices were added when the payment was made and there's no evidence of a SIM swap.

- If a third party gained access to Mr F's account without his knowledge it would be normal to drain the account of funds as quickly as possible, but this isn't what happened here. After the transaction was made funds remained in Mr F's account.
- I've seen evidence to show that Mr F logged into his account multiple times after the transaction was made and before he reported the matter to HSBC the following day. Given the amount of the disputed transaction I consider it likely Mr F would have noticed it. Mr F has said that he was checking to see if funds had been credited to his account, but I think that he ought reasonably to have noticed £8,500 leaving his account.

I consider HSBC acted reasonably in deciding the £8,500 transaction was authorised meaning Mr F is responsible for it.

Mr F has said that HSBC should have asked the recipient bank to return his funds. I'd expect HSBC to try to recover lost funds if a customer is the victim of an authorised push payment scam. An authorised push payment is one that is made by a customer who is tricked into making to. But Mr F is adamant this isn't what happened here and that he didn't complete the transaction. In these circumstances, HSBC can't ask the recipient bank to return Mr F's funds.

I agree with Mr F that the transaction was unusual given Mr F's normal use of the account and that for this reason HSBC ought reasonably to have contacted him before processing it. Mr F says this would have prevented the payment from being made. Given that I have decided it's more likely than not that Mr F made or authorised the transaction himself, it's hard to see how any intervention by HSBC would have made a difference. The position would be different if Mr F was the victim of an APP scam, but this isn't what he's saying.

Overall, I'm not persuaded that Mr F didn't make or authorise the transaction he has disputed so I can't reasonably ask HSBC to refund it.

### **My final decision**

For the reasons stated, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 4 January 2024.

Jay Hadfield  
**Ombudsman**