

## **The complaint**

Mr B complains that HSBC UK Bank Plc (“HSBC”) failed to refund a number of transactions he didn’t recognise.

## **What happened**

Mr B was speaking with HSBC concerning an earlier payment he’d attempted to make. He told HSBC that he wanted to revert the payment (no longer send it). His online banking had been blocked due to this payment and when it was reinstated, he asked about his available balance. He expected it to be a few thousand pounds but found there was only a few pounds left in his account.

Mr B told HSBC that he didn’t recognise a large number of payments to two merchants and spoke at length with various members of HSBC’s fraud team. During one call, HSBC weren’t satisfied about the verification of Mr B’s details and told him they could no longer deal with the problem until the identity matters were sorted out.

HSBC continued to look into the issue and wanted further information from Mr B. After failing to speak with Mr B by telephone, they wrote to him asking him to call. Mr B called HSBC and arranged for the case manager to call him back. A number of attempts to speak with Mr B were unsuccessful and due to a lack of response from Mr B, the claim for a refund was closed.

Mr B got back in touch with HSBC some six months later and made a complaint about the lack of update concerning his request for a refund. He also told HSBC he was going to his branch to remove the funds he was owed.

HSBC looked into the complaint and told Mr B they’d closed his original claim because he hadn’t responded to requests for further information. Mr B continued to request a refund of the disputed transactions, but HSBC declined to make a refund and sent him their final response to the matter.

Mr B was left unhappy with HSBC’s response and brought his complaint to the Financial Ombudsman Service for an independent review. Both parties were asked to provide information about the complaint and Mr B said that:

- Someone had taken his phone and card while he was sleeping – possibly a roommate.
- The card wasn’t in his possession at the time of the disputed transactions.
- He found the card had been returned the day after the money had been taken.
- His card and phone were kept together.
- The personal identification number (PIN) for the card wasn’t written down or known to anyone.

- He hadn't allowed anyone else to use his card.
- Mr B strongly believed the disputed transactions had taken place over one day (when his card was missing).

HSBC provided details of the transactions and copies of calls held with Mr B. In summary this showed that:

- The disputed transactions had used various types of authorisations to carry them out including Apple Pay, contactless and Chip and PIN.
- They were carried out over a five-day period (not one day).
- One of the merchants was used before by Mr B.
- Several large credits from gambling merchants were received prior to the disputed transactions which funded them.
- Apple Pay was registered to Mr B's phone.

After reviewing the evidence, the investigator wrote a report, recommending that Mr B's complaint not be upheld. It was commented that:

- Various security information would be required to access Mr B's phone and obtain the PIN for his card. There was no plausible explanation how someone could have obtained this information.
- Several undisputed transactions were made to the same merchant.
- HSBC's decision to close the investigation was reasonable due to a lack of further information received from Mr B.

Mr B disagreed with the investigator's recommendations and continued to dispute that he was responsible for the transactions. He supplied further information in support of his complaint:

- He didn't believe there was any evidence showing he made the payments himself.
- His roommate could have easily taken his card for the contactless payments.
- The transaction only occurred over one day.
- Mr B also complained about the treatment he received whilst in the branch.
- Mr B said the person (roommate) admitted to taking his card.
- Mr B provided a letter from his "roommate" admitting to the use of his card, obtaining the PIN and setting up Apple Pay on his phone to use his account without his permission.

As no agreement could be reached, the complaint has now been passed to me for a decision.

## **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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that HSBC can hold Mr B liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

HSBC can only refuse to refund unauthorised payments if it can prove Mr B authorised the transactions, but HSBC cannot say that the use of the card and PIN or the use of Apple Pay or the online payment details conclusively proves that the payments were authorised.

Unless HSBC can show that consent has been given, it has no authority to make the payment or to debit Mr B's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr B. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr B responsible for the disputed transactions or not.

Mr B's complaint essentially revolves around the use of his payment card and an Apple Pay facility to make transactions from his account that he didn't authorise. He's supplied an admission from a roommate that they carried this out without his permission.

HSBC don't believe it was anyone else but Mr B who carried these transactions out, so my decision here rests on the balance of the evidence and what I think most likely happened. I wasn't present at the time, so can't know what actually happened, but I can make a finding on the balance of probabilities based on an objective assessment of the available evidence.

Here, Mr B has provided a document he said comes from a roommate claiming to have taken his card and used it (with his PIN) to make a number of disputed transactions, including contactless payments and the use of Apple Pay. That document includes a copy of the driving licence, but no further details such as a phone number. The letter seems central to Mr B's claim – that's because his assertion is that he wasn't responsible for these payments, and his roommate was. If his payment details were taken and used without his authority, then he wouldn't be liable for the transactions. So, I've looked in detail how the various disputed payments were made and when they were made.

The letter includes a description of how the card details were used and the PIN obtained (by observing Mr B using it on a number of occasions). It also describes how Apple Pay was set up on another device in order to use it to make a number of these payments. Whilst I understand that it would be plausible to take Mr B's card and use it for contactless payments over one day/night, it becomes less plausible if this was to happen over a five-day period where there were other uses of the card by Mr B that he hasn't disputed.

I noted that Mr B said these payments took place over one day/night period, but the audit data from HSBC contradicts this and I have no reason to think the data was incorrect.

Additionally, setting up Apple Pay on another device requires a specific process to be completed through HSBC before it can be activated. There's no evidence to show that apart from Mr B's own phone, any other device was set up to use Apple Pay with Mr B's account details. HSBC's records show that Apple Pay was only registered (a month or so before the disputed transactions) on Mr B's phone, so is unlikely to have been added to any other phone after that. HSBC were asked to check for any other Apple Pay activations but couldn't find any. Given this evidence, I don't think it's plausible for someone to add this payment

feature (Apple Pay) to their device, despite what Mr B's "roommate" admitted to.

It's also apparent that Mr B's usual use of the account was to make large numbers of transactions with various betting/gaming merchants, similar to the disputed transactions seen here. Mr B also received several payments into his account that enabled the disputed transactions to take place.

Overall, and based on an objective assessment of the available evidence, I think it's more likely than not that Mr B was responsible for these transactions either himself or allowing someone else to use his banking credentials. I think it was both fair and reasonable for HSBC to hold him liable for them.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 29 December 2023.

David Perry  
**Ombudsman**