

## **The complaint**

Mr B complains HSBC UK Bank Plc (“HSBC”) refuses to refund him for a transaction on his account he says was fraudulent.

## **What happened**

Mr B first complained to HSBC about a subscription payment he made to a worker’s union. Mr B said the payment should’ve been a monthly payment, but he was charged for the whole year. Mr B tried to contact the union after the payment was made but he was unable to get in contact and became suspicious that this company was a scam. Mr B says even HSBC haven’t received a response from the union, so it is clear this company is a scam and HSBC should try and retrieve his money back from the union’s bank.

Mr B says HSBC initially refunded him this money but then took it back again, and this took him into an unarranged overdraft. Mr B is unhappy this money was taken back as it caused him significant financial difficulties. It also left him without access to any money as the money his sister lent him was used to pay off the overdraft.

HSBC says it refunded Mr B the money initially while it investigated his dispute. But having done so, Mr B wasn’t able to provide any evidence to support his complaint, in fact the only screen shot he gave it showed the cost of the subscription as an annual payment. So, HSBC says it followed the correct process by then re-debiting the refund. HSBC says Mr B then tried to raise this as a disputed transaction complaint – saying he didn’t authorise the payment. However, HSBC is satisfied that the payment was authorised by Mr B, so it didn’t uphold his complaint on these grounds either.

Our investigator considered the complaint and decided not to uphold it. Mr B wasn’t happy with this outcome and the complaint was then considered by another investigator, but the same outcome was reached for slightly different reasons. As Mr B remains unhappy with this outcome, the complaint has been passed to me for a final 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.

Mr B has raised several points and although I may not mention every point raised, I’ve considered everything he has said but limited my findings to the areas which impact on the outcome of the case. No discourtesy is intended by this, it just reflects the informal nature of our service.

Firstly, I’ve considered the issue of whether this transaction was authorised. The transaction was made using Mr B’s card details and was verified via a one-time passcode (OTP) sent to Mr B’s device. Mr B has told us he made the transaction in question and received the OTP. However, he didn’t consent to the amount charged. But the Payment Service Regulations 2017, which applies to this type of complaint, states that consent is an objective test, and it doesn’t depend on the consumer being fully aware of the details of the payment at the time they completed the procedure for giving consent. So according to the law, the act of Mr B

using the OTP to validate this payment amounts to him giving consent, even though he says he wasn't aware of the payment amount. So overall, I am satisfied the transaction was authorised by Mr B as defined in the Payment Services Regulations.

HSBC investigated Mr B's complaint in respect of the payment amount Mr B disputed. However, it asked Mr B to provide evidence that the amount charged wasn't the amount he agreed to. Mr B wasn't able to provide such information at the time, and when he tried to check again more recently, he has been unable to log-in to the union's member portal. So, Mr B says it isn't possible from him to get any evidence of this now. However, the only evidence provided by Mr B is a screen shot of his completed order showing the annual charge of the union membership. So, without any other evidence to support what Mr B said, HSBC couldn't retrieve this from the recipient's bank and uphold his complaint. And, based on what I've been seen, I think the outcome it has reached here is fair.

Mr B says he now believes that this company is a scam, and he has read online about others experiencing similar problems. However, even if this company is a scam, I can't say HSBC are responsible for this. Mr B authorised the transaction here and HSBC carried out the payment as instructed. As explored by the investigator, we wouldn't have expected HSBC to have flagged this transaction as suspicious. I say this because usually we would expect large payments, perhaps international payments, or payments significantly out of character to be flagged. The payment in dispute was for a relatively low sum and there was no indication that this could have been fraudulent. So, I don't think HSBC did anything wrong by not blocking this transaction.

Mr B says he is unhappy the refund was re-debited, and this caused him to go into an unarranged overdraft. Mr B says he then lost out on funds his sister lent him as this money was used to clear the overdraft. I have thought about this, but I think HSBC were within their rights to re-debit the funds. HSBC made Mr B aware that it would be re-debiting the money as he had not been able to provide any other evidence to support his claim. Therefore, it was for Mr B to ensure he had adequate funds in the account to allow this. As I've outlined above, I think the outcome reached by HSBC was reasonable, so I don't think it did anything wrong by taking-back the refund it initially offered.

I appreciate this decision will be very upsetting for Mr B. It's a lot of money, and I understand he's currently in financial difficulty. So, I do have sympathy for his situation. However, my role is to look at all the evidence, and then reach a decision that takes this into account and is fair to both parties. That means I consider HSBC's position as much as I do Mr B's. And what Mr B's asking for here is for HSBC to use its own funds to pay him back money that he says he spent paying a fraudulent company. But for all the reasons outlined above, I don't think it would be fair and reasonable to uphold this complaint, so I don't think HSBC need to do anything further.

### **My final decision**

For the reasons outlined above, I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 10 January 2025.

Sienna Mahboobani  
**Ombudsman**