

The complaint

Mr B complains HSBC UK Bank Plc won't refund transactions he didn't authorise.

What happened

Between 24 October 2022 – 27 October 2022 transactions debited Mr B's account with HSBC to a merchant which I'll call "M", totalling approximately £1,000. Mr B says he had no knowledge of these transactions and didn't authorise them. However, it transpired Mr B's son had been able to use Mr B's card which was stored with M to carry out the transactions to pay for virtual items as part of an online game.

Mr B contacted M to ask for a refund but as this was declined, he contacted HSBC. Mr B says HSBC told him a chargeback claim had been raised and to call back after three months as this was the length of time it could take to be investigated. But when Mr B called back, HSBC said it had no record of his chargeback claim and he was now out of time under the chargeback rules to raise a complaint.

HSBC didn't refund the transactions but in recognition of the level of service it provided to Mr B it paid him £200 compensation and refunded the interest charges associated with the disputed transactions to M. It also seems HSBC partly refunded one transaction totalling £7 – but I understand Mr B would like all of the transactions to be refunded to him.

Our investigator didn't uphold the complaint. She explained there was no obligation on HSBC to raise a chargeback although she considered it good practice to do so. She explained the card scheme rules needed to be followed which meant a valid chargeback reason code would be needed. However, there was no dispute the goods weren't provided and M had already declined Mr B's claim.

Our investigator said at this point HSBC should have told Mr B there were no chargeback rights but it failed to do so. She went on to say that even if HSBC did raise a chargeback claim for fraud, this was unlikely to be successful because Mr B's son had made the payments on a card stored with M. So she concluded HSBC's redress was sufficient.

Mr B didn't agree. In summary he said he was unhappy his card which was stored only for the monthly subscription fee was used, that the transactions should have triggered HSBC's system and HSBC should have stopped the transactions as they were 'pending' when he contacted them to raise his complaint. He also remained unhappy with the service provided.

As Mr B didn't agree, the complaint was passed to me to consider.

I issued a provisional decision on 6 September as I intended to reach a different outcome to that of our investigator. I have included an extract from my provisional decision:

"I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

When an account holder raises concerns about a transaction, I'd expect their card issuer to

look into the situation further to see whether it has any responsibility for refunding the amount in dispute. It may need to provide a refund if its customer didn't authorise the transaction, or if it didn't intervene in the payment to check it was one its customer wanted to make when it ought fairly to have done so.

In some circumstances, a card issuer can ask for a transaction its customer made to be refunded through the chargeback process operated by the card scheme.

I have considered both whether HSBC should have done anything further in how it approached Mr B's complaint in terms of its own fraud investigation and how HSBC handled his complaint in relation to the chargeback – even though it seems HSBC have only handled Mr B's complaint in relation to the chargeback and service received.

I have taken into account HSBC have said the referral rights Mr B used to bring this complaint to our service were in relation to the service he received when he reported the transactions and that no rights have been issued regarding the outcome of the fraud dispute. But I've considered both elements because I would have expected HSBC to explore both avenues upon receipt of Mr B's complaint that there were transactions on his account he hadn't authorised.

Fraud claim

The relevant regulations here – the Payment Services Regulations 2017 – say that generally a consumer won't be held liable for any transactions made on their account that they didn't authorise, except in limited circumstances. In this case the most important question I need to answer is whether I think it's more likely than not Mr B, or someone acting on his behalf, carried out the transactions.

Authority consists of two elements. The transactions must be authenticated, and Mr B needs to have consented to the payments being made.

I've looked at the card history for the account and can see Mr B only had one card relating to this account at the time the disputed transactions took place. I'm satisfied the payments were authenticated from the information provided to us by HSBC. I say this because HSBC's internal records show the payments were authorised online using the card details so it does appear Mr B's genuine card details were used to make the transactions in question. This also ties up with Mr B's own version of events, where he's confirmed his card details were stored with M, albeit to his mind only for the purpose of a monthly subscription.

Turning to consent, I think all the evidence suggests Mr B's son was using his card details to pay for items as part of his online game. Mr B doesn't dispute that his card details were saved on the device to pay for the monthly subscriptions, and he's also said on the one off occasion this would be used to purchase gift cards – but never in-game purchases.

Although the card details were mainly for the purposes of paying the monthly subscription fees, in reality, this meant Mr B's son was able to use his card details and this enabled the further spending to take place without Mr B's knowledge.

However, I don't think Mr B intended for his card details to be used at all by his son nor do I think Mr B gave his son permission to use his card and he put extra protections in place to prevent this scenario from arising.

I say this because having listened to the call when Mr B spoke to HSBC he explained a minor in his household had used his account without his consent. He explained he didn't know how this had happened and he clearly stated on a number of occasions he hadn't

authorised them.

And when our service asked Mr B about the arrangements for the device he told our service there was security on the device which would be needed to make the purchases and he never disclosed to his son, which he also told HSBC. So I'm satisfied Mr B's testimony around this has been consistent and I don't think he provided his son with any of his passwords and therefore didn't give his son consent to use his account to make the disputed transactions.

Mr B explained that prior to the disputed transactions there was a genuine transaction to M which Mr B authorised and that it later transpired his son oversaw his details which then allowed the further transactions to take place without Mr B's knowledge or consent.

Taking everything into account I'm satisfied Mr B didn't give his son authority to act on his behalf. So it follows that I think the disputed transactions were unauthorised and HSBC should provide Mr B with a refund of all of the transactions.

As far as I'm aware HSBC haven't issued a response regarding the fraud element of this complaint, but I think they should have and I can understand why this has added to Mr B's frustrations in dealing with this complaint.

I also note that Mr B has said the disputed transactions has impacted him mentally and financially. He's explained he wasn't able to feed his family properly and that he was unable to use his car as he couldn't afford petrol. He's also said this situation caused him a lot of worry and stress – which I can understand.

Had HSBC handled his complaint correctly from the outset I think all of the above would have been minimised because HSBC would have provided him with a refund. So for this reason I think HSBC ought to pay a further £200 compensation to reflect the distress and inconvenience caused to Mr B. If Mr B wants to put forwards any financial losses he has incurred, or to otherwise explain why he doesn't think the further £200 is enough to compensate him, I will consider this before reaching my final decision.

Chargeback

Although I am provisionally upholding Mr B's complaint because the transactions weren't authorised, for the sake of completeness I have also looked at the chargeback element.

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules. Although chargeback rights aren't enshrined in law; they are voluntary schemes set up by each card scheme, with the rules determined by each. What this means is that HSBC can in certain circumstances ask the merchant for a payment made to be refunded – although a chargeback isn't guaranteed to result in a refund.

Like the investigator, I would consider it good practice for a chargeback to be attempted where the right exists and there is a reasonable chance of success. There needs to be a valid code (reason) to a chargeback under the card scheme rules. And under the rules the merchant can defend a chargeback if it doesn't agree with the request.

Having considered the circumstances of the case and the reasons a chargeback can be raised, I don't think Mr B's chargeback claim would have likely succeeded. I say this because the Visa rules covers circumstances such as when the goods haven't arrived or were faulty or if M processed the payment twice etc. But I don't think the reasons set out in the codes apply to the circumstances in this case and there is no dispute that the goods that

were paid for weren't received. I also note that Mr B had rightly contacted M directly to try and resolve matters but they had declined his claim. Although I don't think in isolation this should have deterred HSBC from raising a chargeback claim, I do think it gives strength to the argument a chargeback claim may not have been successful.

Mr B is unhappy that when he initially contacted HSBC regarding the disputed transactions, he was given the impression this would be raised as a chargeback and that he'd need to wait three months. Mr B says he called back three months and one day later only to be told nothing was logged, and that it was too late now for him to raise a dispute.

I agree that this fell short of the level of service Mr B should have expected. I say this because HSBC should have either raised the chargeback for him – or if not, explained why they thought it was unlikely to succeed but this didn't happen. So I think HSBC could have handled this better.

HSBC also issued a letter saying they couldn't process the transaction of £1.46 because it wasn't in scope of the Visa rules. I think this was confusing because Mr B had clearly raised a dispute regarding multiple transactions which totalled approximately £1,000 so I can understand why Mr B felt frustrated.

However, I have taken into consideration HSBC have awarded compensation of £200. I think this amount seems fair and reasonable. I say this because it would have felt very frustrating for Mr B to be told to wait three months but then for it to transpire that no action had been taken, so I can imagine his disappointment. But I have also taken into consideration that had a chargeback claim been raised, I think it's unlikely it would have been successful – for the reasons I've explained above.

Mr B's complaint points

Mr B has raised a number of complaint points which I have addressed for the sake of completeness.

Should HSBC have intervened?

Mr B has said HSBC should have intervened in the transactions at the time as the activity was unusual for his account and was taking place in the middle of the night.

Having looked at HSBC's internal records, the transactions were carried out at various points throughout this period. Whilst I appreciate there were a lot of transactions being made to 'M' within a number of days, I've also considered that these were fairly low in value for example there were payments of £4.49 and £8.99 and the highest amount was £89.99.

The overall value of the transactions totalled approximately £1,000 which is higher than the usual amount of debit on the account but I don't think sufficient enough to warrant HSBC intervening in the transactions.

HSBC have also said that the payments were made to an existing beneficiary and the payments didn't flag any of the parameters for them to carry out additional checks. So overall I don't think HSBC were unreasonable in allowing the transactions to 'M' to debit the account.

The transactions were showing as pending

Mr B also says HSBC should've stopped the transactions as they were pending at the time he raised the fraud claim.

HSBC have explained 'M' secured the payments by authorising them which is why they were showing as pending but once 'M' had requested the payments, they were statemented. I should explain that it isn't unusual for a payment to show as pending before being debited from the account and it wouldn't have been possible for HSBC to stop the transactions from debiting the account.

I say this because Mr B's son had made instant purchases online and the funds would have been ringfenced to be debited. So even though when Mr B called HSBC the transactions were 'pending' this doesn't mean HSBC could have stopped them from debiting the account when he contacted them.

Conclusions

For the reasons I've explained above I don't think Mr B authorised the transactions to M. As a result HSBC should refund all the transactions debited by M between 24 October 2022 and 27 October 2022.

I think the service provided by HSBC has fallen short in terms of dealing with both the chargeback and fraud element which is why I think the compensation should be increased by a further £200.

If Mr B has any financial losses he would like me to consider as a result of HSBC not dealing with his fraud claim as they should have, I am happy to consider these before reaching my final decision."

HSBC said that although they didn't agree with everything that I said they would agree to the recommendations as a gesture of goodwill to bring matters to a close.

Mr B said he didn't have any more points to reference in his complaint.

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.

As Mr B has accepted, and HSBC has agreed to pay the redress, there's no need for me to make any further findings.

My final decision

My final decision is that I uphold this complaint. HSBC UK Bank Plc must carry out the redress as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 24 October 2024.

Marie Camenzuli
Ombudsman