

The complaint

Mr O complained because HSBC UK Bank Plc refused to refund him for transactions he said he didn't authorise.

What happened

Mr O said that on 22 June 2024, he met a former business colleague. He said the business relationship had ended two years earlier when the former colleague had gone to prison. Mr O said he'd agreed with the former colleague that he'd still pay him for some business work, so he'd made some payments to him, but hadn't seen him until 22 June.

Mr O was with a friend who was returning a rental car. When they were there, he met the former colleague. All three got into Mr O's car, with the friend in front and the former colleague in the back. Mr O then used his phone, which was protected by a PIN and Face ID, to authorise a genuine payment of £1,700 to his former colleague. This went through at 9.49 pm.

Mr O said that the former colleague asked to look at some financial business statements. So Mr O handed over his phone, which was unlocked. Mr O said that, unknown to him, the former colleague then made three more faster payments to himself:

£14,000 at 10:24 pm
£6,900 at 10:35 pm
£18,000 at 10:36 pm.

The total of the disputed payments was therefore £38,900. The HSBC app was then deleted. Mr O said the former colleague handed him back the phone.

Mr O said that a few hours later, he wanted to pay some outstanding invoices. So he tried to access his HSBC app, but it wasn't there. So he downloaded it again, but couldn't access his account. He said he tried to contact HSBC but was told to go into a branch on Monday morning and file a fraud report.

HSBC investigated. But it didn't agree to refund Mr O.

In HSBC's letter of 27 June, it said it had contacted the beneficiary bank as soon as it was made aware of what had happened, and would return any remaining funds direct to Mr O's account. I've seen that HSBC did contact the financial organisation which had received the three payments promptly on 25 June. It was later able to recover a total of £10,923.40 which was credited back to Mr O's account. So the amount of the loss which wasn't recovered from the three disputed payments was £27,976.60.

HSBC's 27 June letter went on to say that it was satisfied that the payments Mr O had reported had been made using genuine online banking security details, including biometric data. The payments couldn't have been made without this secure information. It pointed out that security details are unique to each user and should never be disclosed to another party. It said that because of multiple levels of security in its mobile banking login process, it was

unlikely that Mr O's security credentials would be known to anyone without Mr O's knowledge. So it wouldn't refund him.

Mr O complained.

HSBC sent Mr O its final response letter on 19 August. It said that its Fraud Operations Team had investigated the payments and had found they'd been made using Mr O's online banking facility. The HSBC person reviewing Mr O's complaint had come to the same conclusion. She said HSBC was satisfied that the payments reported had been made using genuine online banking security details, including biometric data, and couldn't have been made without this information.

Mr O wasn't satisfied and contacted this service.

Our investigator didn't uphold Mr O's complaint. She explained that customers are only liable to transactions they've authorised. And customers have a responsibility to protect their account, including keeping cards safe, and keeping PINs and online banking secret. If they don't, they might be liable, and we need to consider whether someone has been '*grossly negligent*' and failed to keep their account safe.

The investigator looked at Mr O's mobile banking log. This showed multiple log-ins using Face ID, especially between 9.48 pm and 10.31 pm. The genuine £1,700 payment made by Mr O was completed at 9.49 pm after logging in using Face ID at 9.48 pm. The mobile records showed that Mr O's mobile app was then accessed, again using Face ID, at 10.23 pm. There was another payment, a Me to Me payment, 32 seconds later, then the first disputed payment at 10.24 pm.

The investigator noted that Mr O had said he'd given his phone to his former colleague immediately after the genuine £1,700 payment, and this had given his former colleague the opportunity to access his HSBC account. But 34 minutes passed between the genuine payment and the log-in for the first disputed payment. And there had also been another login, using Face ID, before the second and third disputed payments. So the investigator thought it was likely that Mr O had been in possession of the phone throughout the time of the disputed payments.

The investigator also highlighted inconsistencies in what Mr O had said on the phone to HSBC at different times, and also inconsistencies in what he'd told this service. And she noted that Mr O had successfully logged in early in the morning of 23 June, but hadn't reported the dispute until several hours later.

So the investigator concluded that the disputed transactions couldn't have been completed without Mr O's knowledge and involvement. This meant HSBC didn't have to refund him.

Mr O didn't accept this. He sent a very long and detailed response to the investigator's view. In summary, some of his key points included:

- he thought the HSBC app could remain logged in for 30 minutes;
- he wanted technical information about how Face ID worked;
- his mental health, business and family had been severely affected;
- he acknowledged that there had been some perceived variations in his testimony, which he said was the result of emotional distress and confusion;
- he said that in the early hours of 23 June, he'd requested a PIN re-set, but he believed that phone recording would show he wasn't aware of the fraudulent activity at that point;
- it was entirely possible that his ex-colleague had misused his phone while he'd had it, but HSBC should have had a system to block such large transactions. He said HSBC

needed to make a fuller investigation and listed multiple aspects which he thought HSBC should have investigated.

Mr O asked for an ombudsman's 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 O has raised multiple points in his submissions to this service. I've understood all of those and considered all he's said and sent us, but in reaching my decision here I've focused on what I think is vital to my conclusions.

What the Regulations say

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them.

The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed "*gross negligence*."

So what I need to consider, in deciding whether HSBC has to refund Mr O, is whether it's more likely than not that Mr O, or someone else without his consent, authorised the disputed payments. The Regulations also mean I need to consider whether Mr O was grossly negligent with his security credentials for his account. These issues are what determines whether or not HSBC has to refund Mr O.

What this decision covers

This decision is only about whether or not HSBC has to refund Mr O for the net amount in dispute of £27,976.60. As I've explained, the outcome depends on the issues I've set out above – who authorised the disputed transactions and whether Mr O was grossly negligent with his security credentials. Mr O has also raised many other points: for example about HSBC's investigation, and HSBC's procedures and computer systems. But these aren't matters for me to consider. My decision is just about whether or not HSBC has to refund Mr O, based on the Regulations.

Mr O also asked the investigator to send him evidence. But as the investigator explained, the information she received from HSBC was what she'd requested and what was appropriate to her investigation. This service wouldn't disclose this to Mr O. He can contact HSBC if he wishes, and it would be up to HSBC to decide whether or not to disclose this to Mr O.

Who is liable for the disputed payments?

I've looked carefully at all the evidence provided both by Mr O and by HSBC. Both sides have provided detailed evidence, but I haven't quoted it all in this written decision. What I've set out below focuses on important factors which all the evidence has shown.

There are inconsistencies in what Mr O told HSBC at different times, and in what he told this service. To give one example, in the phone call between Mr O and HSBC at 3.54 am, when he first reported the disputed transactions, he said he'd been robbed by someone he didn't know, who had stolen the phone while it was unlocked, and the unknown thief had then gone

on to empty his account. This is different to his later versions, and to what he told this service when he first contacted us. When the investigator raised this, Mr O replied that the inconsistencies were the result of emotional distress and confusion, compounded by intoxication. In that reply to the investigator, Mr O also said that the phone had been flashed in front of his face for a brief moment. This was in the context of the Face ID logins. Mr O said that during trauma and distress, it's well known that individuals only recall key events, and the act of his phone being flashed in his face stood out. But if this stood out for him, it's strange that he didn't mention it when he first contacted this service, and nor is it mentioned in key conversations with HSBC. There are other inconsistencies too. I won't describe them all in detail, but I don't consider they're explained by emotional distress at the time of reporting.

I can't know for certain what happened on 22 June at the time when Mr O and his former colleague were in his car and when the disputed transactions took place. However, I'm not persuaded by Mr O's argument that his online banking app would have stayed open for at least 30 minutes. This also conflicts with the computer evidence which shows that after the genuine £1,700 payment was completed at 9.49 pm after logging in using Face ID at 9.48 pm, there was another login using Face ID at 10.23 pm. If the app had stayed open, there wouldn't have been a need for another login. And the use of Face ID means that it would have had to be Mr O's face which unlocked the app. I'm not persuaded by Mr O's later argument that the phone was flashed in his face. He hadn't raised this earlier, despite saying it was very memorable.

I've also considered the timing of when Mr O reported the disputed transactions. The mobile banking computer data shows that he logged in to his mobile app at 1.41 am and 1.51 am on 23 June. At that point, his balance was £38,900 lower as a result of the payments he later disputed. It seems unlikely that Mr O wouldn't have noticed this, and reported the transactions to HSBC's 24 hour fraud line at that point. Mr O's response was that this login was misleading, as it was when he'd called for assistance to regain access to his account, and wasn't to do with authorisation of transactions. But I'm not persuaded that this was likely, and it was several hours before Mr O contacted HSBC to dispute the transactions.

In Mr O's response to the investigator's view, he said that HSBC should have stopped the disputed transactions. He said HSBC had stopped some genuine transactions in the past, requiring more evidence that he'd authorised them. Again, Mr O didn't raise this point in his initial contact with this service. But banks have to balance security precautions with their responsibility to fulfil customers' payment instructions. And here, Mr O had made multiple large previous payments to his former business colleague. That's not just the genuine £1,700 payment at 21:49 pm, but he'd made other payments too. That person was set up as an existing payee on Mr O's HSBC account. Banks' security systems are confidential, and I don't have details of HSBC's complex mechanisms for deciding which payments to trigger as suspicious. But given that Mr O had made genuine payments to his former colleague on multiple previous occasions, who was set up as an existing payee, I don't consider it was unreasonable that HSBC didn't block these payments.

I can't know for certain what happened between Mr O and his former colleague at the time of the disputed transactions on 22 June. But in the light of all the evidence I've seen, I consider it's more likely than not that Mr O authorised the payments himself. If he didn't, I consider it's most likely that he was grossly negligent in allowing his former colleague, with whom he said he'd fallen out, to have access to his phone and HSBC banking security details. With either of these scenarios, Mr O is liable for the payments, and HSBC doesn't have a duty under the Regulations to refund Mr O.

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 O to accept or reject my decision before 25 December 2024.

Belinda Knight
Ombudsman