

## **The complaint**

Mr P is unhappy with HSBC UK Bank Plc's handling of his debit card fraud claim and its refusal to refund him for a series of disputed transactions he says he didn't make.

## **What happened**

Mr P contacted HSBC in May 2019 to report a series of gambling transactions over the previous two days totalling about £800. These had been made from his mobile phone, which Mr P says was stolen and someone had accessed the gambling app on it. Mr P says his mobile phone wasn't password protected, which is how someone else was able to get into the device and make the transactions.

HSBC investigated Mr P's claim but declined to refund him. It felt the disputed transactions had been authorised by Mr P.

As Mr P remained unhappy, he brought his complaint to our service.

Our investigator didn't recommend that Mr P's complaint be upheld, as he thought that the disputed transactions had more likely than not been authorised by Mr P. Unhappy with the investigator's view, Mr P requested 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 P will be disappointed to hear that I also won't be upholding his complaint. I'll explain why.

The relevant law and regulations provide that when transactions using a customer's card details have been authorised by the customer, they will generally be responsible for them. And where there's a dispute about whether a customer has authorised the transactions, the bank is expected to provide evidence as to why it's holding its customer liable.

As a result, I need to weigh up the information that's been provided to me by both parties and decide whether I think it's fair and reasonable for HSBC to have held Mr P responsible for the disputed transactions.

Having carefully reviewed all the information, I've found that the transactions were more likely than not authorised by Mr P.

For someone other than Mr P to have made the gambling payments, they would've needed access to his mobile phone (containing the gambling app in question) and his card details - as the number on the back of the card was required to make a deposit. In addition to this, in order to financially benefit from this activity, the third party would have needed to get access to the actual bank card and/or the online/mobile banking details as well, so they could transfer any winnings out to themselves.

Having listened to the call where Mr P first reports the disputed transactions – he says he still has his bank card in his possession. This is different to the version of events since provided by his representative, who says his wallet (containing his bank card) was also stolen with his phone, whilst he was attending a party. We've also been told that there was a photo of Mr P's card on the phone, as a relative had sent this to him when he was working away from home

I've considered both of these explanations. But given Mr P's call with HSBC was just after the disputed activity, and so is likely to provide the best record of events, it's my finding that his bank card was more likely than not still in his possession at the time of the alleged theft. So, I consider it unlikely that an unknown thief would have carried out this activity, as unless they were to have known about, and checked through, all of Mr P's photos to find a picture of the card, they wouldn't have had the necessary code to make the deposits. There would also have been no benefit to them in gambling on the phone if they couldn't collect any winnings.

Mr P thinks his ex-partner may have taken his phone and maliciously run up the transactions on his gambling account. And he says that they would have known all his online banking details and passwords too. But the gambling company has said the disputed transactions and the gameplay look very much like previous activity that Mr P has undertaken on the account. And no other money was taken from Mr P's bank account at the time. So, if it was his ex-partner acting maliciously, it's strange that they didn't try to access his bank account too.

Mr P's bank statements show that shortly before the disputed transactions take place, a substantial loan credits his account. Before this credit, Mr P's available balance was minimal and certainly not enough to fund around £800 worth of gambling transactions.

This would suggest that whoever was making the payments knew that there were now funds available to do so. And by the time the disputed transactions came to an end, there were still substantial funds in the account. A third-party fraudster would ordinarily empty an account. So, this also doesn't bear the hallmarks of something a phone thief would have done. And the way that the transactions were run up in relatively small amounts at a time, and over an extended period, doesn't look like someone was trying to take advantage of the high balance in Mr P's account by spending it very quickly. So, it doesn't lend to this being malicious activity either.

There was another transaction that Mr P disputed for about £30 at around the same time as the gambling transactions. I understand that HSBC refunded this. Mr P's representative thinks it strange that the Bank have repaid that small amount and not the gambling transactions. But it looks like the amount refunded was for a subscription to a website that Mr P didn't recognise. And that transaction could have been put through at any time over the previous few days. So, I don't think it's relevant to whether or not Mr P authorised these gambling transactions. And there's no evidence to suggest that it was made by the same person that Mr P alleges stole his phone.

Mr P's representative has said she thinks the payments were unusual for Mr P and that HSBC should've done more to flag them before they were processed. Whilst the individual values do differ slightly to previous activity, the number of payments is very similar to the genuine gambling transactions that Mr P has previously made. For example, there are days in the months leading up to the disputed activity where Mr P has made a substantial number of payments to the same gambling company, not too dissimilar to the number that are now being disputed by him.

Mr P's gambling history also indicates that he has previously spent larger sums of money overall (albeit over a different timeframe) to the same gambling company across a number of different bank cards. He's also often ended up winning overall about as much as he spent. But on this occasion the person using the account does appear to have lost pretty much all of the money that was credited to it. So, on the face of it, it looks very much like this could be a case of regretted gambling losses.

Taking all of the evidence together, I think the circumstances all support the likelihood that it was Mr P that authorised the payments. Of course, I can't be absolutely certain of that. But I need to reach a finding on the basis of what's more likely than not to have happened. And I'm afraid that the evidence lends to it being Mr P that carried out this betting activity.

Given the spending is also similar to his usual activity on the account, I also don't consider that HSBC should have intervened here either. There was no obvious pattern of fraud occurring on Mr P's account. So, I don't think it's reasonable to expect it to have flagged up on the bank's fraud systems.

I'm sorry that this won't be the answer that Mr P wanted, but I hope my explanation helps him understand why I've reached the decision that I have.

### **My final decision**

It's my final decision that I don't uphold Mr P's complaint. And I won't be asking HSBC UK Bank Plc to do anything further.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 14 June 2021.

James Kennard  
**Ombudsman**