

The complaint

Mr B is unhappy that HSBC UK Bank Plc won't refund transactions he didn't authorise.

What happened

On 24 July 2019, Mr B said he was contacted by someone claiming to be from 'F', an online trading platform regulated by the Financial Conduct Authority (FCA). He said he wanted to learn about trading and was told he'd need an account to do that with a £500 deposit.

Mr B recalled providing his card details over the phone to make the £500 payment. Afterwards, he was told they had set up a mini account for him and taken a much higher amount. Mr B argued it wasn't authorised and recalls being told that to refund the money, he'd need to provide ID, a copy of his card (with certain details covered), as well as signing a form to confirm he'd made the transactions.

Mr B said he refused to sign the form and became concerned it was a scam, so he contacted HSBC for help. HSBC refused to refund the transactions – they said the transactions were made using the same device Mr B used before and they were verified with one-time passcodes. They added that Mr B didn't check the company before he shared his card details, and there weren't chargeback rights available. Finally, they said their systems didn't flag the payments as suspicious. Unhappy with the response, Mr B brought his concerns to our service.

I've included a table with the relevant attempted and successful disputed transactions from 24 July 2019:

| Time | Merchant | Amount | Outcome |
|-------|----------|-----------|----------|
| 12:36 | Leverate | £502 | Approved |
| 12:39 | Leverate | £5,020.04 | Declined |
| 12:41 | Leverate | £2,510.02 | Approved |
| 12:43 | Leverate | £2,510.02 | Declined |
| 12:44 | Leverate | £1,201.81 | Declined |

On 14 June 2022, I issued my provisional decision. I explained why I didn't think Mr B authorised the payments after the initial payment for £502. And because I didn't think he'd failed with gross negligence or intent, then in line with the Payment Services Regulations 2017, I thought HSBC should refund the second payment for £2,510.02. I also noted he'd also be entitled to a partial refund under the Consumer Credit Act 1974 (CCA). Finally, I noted other concerns that HSBC allowed the payment to go through, after declining the attempted payment for a higher amount.

Mr B accepted my findings. HSBC disagreed. In summary:

- It didn't understand how I've considered the first payment for £502 authorised and the following payment for £2,510.02 as unauthorised, when both payments were made using Mr B's device and all from the same IP address.

- It's said the payments were made online and not over the telephone, so it asks how the customer's device could've been used. It's pointed out that Mr B said no-one else had access to his device.
- It's said no one-time passcodes were sent for these disputed transactions.
- Because it didn't agree the payment was unauthorised, it didn't think the CCA applies.
- It queried the comments that the £5,020.04 payment was declined as it suspected fraud – it said the transaction came through via the VISA Secure system as authorised.

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.

HSBC highlighted that the payment was made online. I accept this, but I don't think it's inconsistent with Mr B sharing his card details over the phone. This is typical of a lot of scams that we see – where details are shared and the fraudster uses these to make online payments.

I realise the driving force of HSBC's argument is that the payments are recorded as coming from Mr B's device. I acknowledged this in my provisional findings – and highlighted that the device ID data contradicts how the IP address for these payments was based in another country. This suggests the evidence isn't conclusive that it was Mr B and that something has gone on here – for example, that the fraudsters did take over his device and he didn't realise or remember it. HSBC didn't respond to this point. Nor has it responded to the other points I raised that suggested the latter payments were not authorised. So its response hasn't changed my mind.

HSBC have asked why I reached a different conclusion on the first payment to the others. I'm satisfied my provisional findings explained this – for the first payment, I consider that Mr B gave the fraudster permission to consent to a payment on his behalf. I'm not persuaded that was the case for the latter payments (attempted and successful).

I've also considered HSBC's query surrounding the attempted transaction for £5,020.04 and whether it declined it because it suspected fraud. I acknowledge the data isn't available for this transaction to explain why it was declined. And having reviewed it alongside Mr B's statements, I accept it was more likely to have been declined because he'd insufficient funds.

Regardless of this, I'm satisfied the complaint should still be upheld for the other reasons I explained in my provisional decision. I'd also add that, whether or not HSBC was concerned about fraud, I think there remains a question about whether it should have been. After all a transaction was attempted very quickly after the previous transaction to the same merchant – for a relatively significant amount of money that Mr B didn't have. Arguably, this also further supports the likelihood these latter transactions were unauthorised – it doesn't make sense that Mr B would've continually attempted payments very quickly for money he likely would've known he didn't have.

So, in all, I've not changed my mind about what I consider a fair outcome to this complaint. For completeness, I've included my provisional findings below.

It's not been disputed that Mr B is the victim of a scam. While F is a legitimate firm, it seems he was contacted by someone pretending to be them. In saying that, I've considered that F had no record of him when he later contacted them, and there's a warning on the FCA's website about clones of this firm.

Were the transactions authorised?

In line with the Payment Service Regulations (PSRs), Mr B isn't liable for payments he didn't authorise, unless he failed with intent or gross negligence to comply with the terms of the account or keep his personalised security details safe.

To decide whether Mr B authorised these payments, I've considered the Payment Service Regulations 2017 (PSRs). Broadly, these explain that it depends on whether the payment transactions were authenticated correctly and whether he consented to them. It's not disputed here that Mr B's card was used to make the transactions. So I'm satisfied the transactions were authenticated.

So I've gone on to consider whether Mr B gave his consent. The PSRs state how consent is given – it's not something that's open to interpretation. They say it must be given in the form, and in accordance with the procedure, agreed between Mr B and HSBC. It's also possible for someone else to act on Mr B's behalf and use these agreed steps.

Mr B explained that he provided his card details to the caller over the phone to make a £500 deposit. So even if he didn't use the form and procedure himself, I'm satisfied he gave someone else permission to act on his behalf and use the agreed steps.

I acknowledge Mr B's point that he consented to a £500 payment and they took £502. But for the purposes of consent under the PSRs, he didn't need to know all the details of the payment, like the amount or who it was going to. It's enough that he gave someone permission to consent to a payment on his behalf.

It follows that I'm satisfied the first transaction for £502 was authorised.

I've considered the second successful transaction for £2,510.02. I'm not satisfied that, in these circumstances, Mr B's permission for one payment meant that he had, actually or in appearance, given them permission to consent to further payments on his behalf.

I note HSBC's point that Mr B must have gone through the agreed steps himself as the device IDs all match previous transactions he made. But there's conflicting data here – the IP address for these transactions indicates that the device was being used in a different country. So I'm not persuaded this evidence is conclusive.

Mr B also said he handed over his card details for the first payment to be made; he didn't make it himself. I think that makes sense. It's unclear to me why fraudsters would ask Mr B to make the payments when they'd an opportunity to take his card details.

HSBC also said that one-time passcodes, sent to Mr B, were used to complete the transactions. But they've not provided any evidence to support that when we've asked for it.

I've also considered the pattern of the transactions and how it is consistent with unauthorised use. Transactions were attempted in very quick succession – and, as soon as a payment was declined, a lower value was attempted.

Finally, I've reviewed Mr B's testimony. He's consistently said – to both HSBC and our service – that he authorised a transaction for £500 and didn't consent to further transactions. It seems likely to me that any further actions he took were under the guise of getting his money back, after they said there had been a misunderstanding over the account he wanted.

Taking everything into account, I'm not persuaded that the second transaction for £2,510.02 was authorised.

Did Mr B fail with intent or gross negligence?

I don't think HSBC have shown that Mr B failed with intent or gross negligence to comply with the terms of the account or keep his personalised security details safe.

As I've mentioned, it's not clear what security details Mr B shared. But overall, I can see why he was initially persuaded he was dealing with a legitimate firm. It's always possible to say that he could've carried out more due diligence, but I'm not persuaded that his actions here were significantly careless. And I note Mr B stopped dealing with the caller when they asked him to sign a form saying he authorised transactions. So I don't think there's evidence to support that he seriously disregarded an obvious risk.

I've also noted that most of this transaction came from Mr B's overdraft. In line with Section 83 of the Consumer Credit Act 1974, he isn't liable for losses arising for the unauthorised use of a credit facility. That's not subject to a consideration of intent or gross negligence under the PSRs.

On this basis, I don't think Mr B is liable for the second transaction – and HSBC should put things right.

Other considerations

Regardless of this conclusion, it strikes me there's a further reason to uphold this complaint. I'd expect HSBC to be on the lookout for unusual transactions or other signs that might indicate Mr B was at risk of fraud and intervene appropriately.

I can see why the first payment didn't flag – the amount wasn't particularly unusual and the merchant hadn't been reported as a scam with reputable bodies.

But HSBC subsequently declined a transaction for £5,020.04 – their records suggest they suspected fraud. Yet they took no further action before a payment was approved to the same merchant two minutes later.

Given its previous concerns, I'd have expected HSBC to have made reasonable enquiries to establish whether Mr B was at risk of financial harm. And had they have spoken to him, I think his losses for the second transaction would've been prevented.

That's because I think it would've been established that the funds were going to different place than the company Mr B thought he was dealing with. And moreover, that payments were being attempted when Mr B was trying to get his money back.

I've finally considered whether HSBC could've helped Mr B recover all the money he paid to the merchant by raising a chargeback. But given VISA's rules for chargebacks in this area, I don't think there was a claim they could've raised that would have been successful. So I think HSBC's response was right on this point."

Putting things right

I conclude that Mr B remains liable for the first transaction for £502, but HSBC should refund the second successful transaction for £2,510.02.

As the transaction caused Mr B to enter his overdraft, they should also rework his account and refund any interest and charges, along with amending his credit report to remove any negative reporting, that was caused by the transaction. If Mr B repaid the borrowing created by the transaction, HSBC should also add 8% per year simple interest from the date he repaid the borrowing to the date of settlement (less any tax lawfully deductible).

HSBC should've refunded this much sooner, and I can see that's caused Mr B to worry about the debt he had. So I also award £100 to reflect his distress.

My final decision

For the reasons I've explained, I uphold Mr B's complaint and order HSBC UK Bank Plc to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 27 July 2022.

Emma Szkolar
Ombudsman