

The complaint

A representative of Mr W's estate has complained HSBC UK Bank plc hasn't refunded money they believe was taken from Mr W's account without his authorisation.

What happened

In December 2019 Mr W's current account was almost emptied over the course of two days by a series of payments to two online retailers. Most of those payments were to a retailer I will call H, but there was also one payment to a different retailer, which I will call S. The full details of these payments were set out in our investigator's view, so I see no need to repeat those details here. Mr W contacted HSBC in January 2020 to query these payments. Mr W wasn't able to give any explanation as to how these payments might have happened, but did confirm he had previously made a payment to H – although he had been unhappy with the goods he then received.

HSBC considered Mr W's concerns, but was not willing to refund the payments that had been made. HSBC said that it had previously refunded payments made to H with a different debit card but would not continue to refund payments when there was no clear point of compromise to explain how a fraudster might be getting hold of Mr W's card details.

Mr W passed away in April 2020, and his brother – Mr W2, who is acting on behalf of Mr W's estate – referred his concerns about the disputed payments to our service. One of our investigators looked into what had happened but felt that the inconsistencies in Mr W's accounts of what had happened, and the lack of any clear explanation for how another party might have got hold of Mr W's card details, meant it was more likely that Mr W did authorise the disputed payments or allow them to be made.

Mr W2 disagreed, so because no agreement could be reached, the complaint was referred to me for a decision.

I issued my provisional decision on this case on 16 August 2022. Mr W2 confirmed that he agreed with my findings. HSBC has said it does not agree, specifically it has commented that it still believes these payments were most likely made with Mr W's knowledge, and that it did ask for evidence from the retailers but none was provided.

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.

In my provisional decision I explained the following:

"It's clear from looking at Mr W's bank statements, and from the history of his interactions with HSBC, that there have been a number of disputed or suspicious payments on his account over an extended period of time. Since June 2019 Mr W2 has identified over 30 payments to various online retailers that he says were not made by Mr W. Around half of these payments had already been refunded to Mr W by HSBC under previous fraud claims.

Of the remaining disputed payments, there is one particular block of transactions – on the 16 and 17 December 2019 – that Mr W himself raised as suspicious with HSBC. The other payments Mr W2 is disputing are to different retailers over the previous six months or so, but we have no confirmation from Mr W that these were not made either by him or with his permission. And as Mr W has now sadly passed away, we won't be able to confirm with him whether he did or did not consider those other transactions to be fraudulent. So with this in mind, and given that only the payments on 16 and 17 December have been considered by HSBC as part of this complaint, I am also going to focus only on those specific payments that we know Mr W felt were fraudulent.

I've thought carefully about what both sides have said here regarding these payments. Specifically, HSBC has said:

- Mr W and his representatives have been inconsistent in their explanations of what payments Mr W may or may not have authorized*
- Mr W raised concerns about payments made using details from four different debit cards*
- No reasonable explanation had been given as to how a fraudster could have repeatedly got hold of Mr W's card details, and Mr W and his representatives have been inconsistent in their recollections of who may have had access to his home (ie. Whether Mr W had a carer or not)*
- Mr W has confirmed he did make a legitimate payment to H, and so he has a pre-existing relationship with this retailer*

Mr W and his representatives have said:

- Mr W made one payment to H to buy a necklace for a friend of his – this has been described by Mr W and his relatives as being in either August or December 2019 and they have said the necklace was poor quality and/or not as described*
- Mr W did not have an official carer but a neighbor regularly came in to help him out – this neighbor may be the same person that Mr W bought the necklace for in the legitimate payment to H*
- Mr W didn't have a mobile phone or computer and didn't have access to the internet, he was over 90 years old and essentially housebound*
- The pattern of transactions on Mr W's account, and the repeated previous claims for card fraud, should have alerted HSBC to the fact that something untoward may have been happening, so it should have stopped the payments to H and S on 16 and 17 December*

After carefully considering what we'd already been given regarding this complaint, I asked HSBC for some more evidence to show exactly what was happening around the payments that are in dispute. However, HSBC has been unable to provide us with all of the evidence I requested. Specifically, it has been unable to show which phone number the one time payment codes were sent to which were used to authenticate the payments that are in dispute here. HSBC has also been unable to provide any transaction reports further back than October 2019, which might have shown IP addresses or other information about how some of the earlier payments were made – specifically the first payment to H, which it seems likely is the one that Mr W has said is a legitimate payment.

And the evidence I have seen causes me some concern. Specifically, the transaction report we do have shows IP addresses for the payments that were made to H and S. The IP addresses on this report are linked to a company that provides VPN services (virtual private network.) This isn't something that I would think it likely an elderly man would use, particularly when several of his family members have confirmed in conversations with HSBC that he did not have a computer or any internet access at his home. To me, this opens up the possibility that somebody else was making these payments either with or without Mr W's knowledge.

And listening to Mr W's conversation with HSBC, I think it's clear that he had no idea these payments were going to be made. There's nothing in the calls I've listened to that makes me think Mr W was trying to deceive HSBC in any way, he sounded genuinely confused and distressed by the payments. I appreciate that HSBC says no clear explanation has been given for how someone could have repeatedly got Mr W's card details. But I think it's clear from what Mr W and his relatives said when they spoke to HSBC that he did have a neighbour regularly visiting his home. And anyone who had access to his home would not find it difficult to either write down or photograph his card details, or even to take his card for a short period given that his statements suggest he did most of his banking via cheque or on the phone.

I also note that HSBC hasn't obtained any information from the retailers in question to suggest that Mr W did make the payments, such as delivery information or details of any account held with those retailers. And while I appreciate that Mr W's account of what might have happened in that initial call with HSBC had some inconsistencies, I think we have to bear in mind Mr W's age and distressed state may have contributed to any confusion.

With all this in mind, I'm not currently satisfied that I've seen enough to show Mr W was responsible for or consented to the disputed payments from 16 and 17 December 2019, and it follows that I don't think it is reasonable for HSC to have held him liable for those."

I appreciate that HSBC feels it's possible Mr W was either present when the transactions were made by a third party, or at least aware they were being made. HSBC has said it thinks this is probably how the genuine transaction to H was also made. But I've not seen any evidence to support that this is what actually happened here. Mr W told HSBC that the initial legitimate payment was made over the phone, and the evidence I have seen suggests that Mr W was unaware of the other transactions. It also seems unlikely that he would willingly have agreed for his bank account to be emptied of over £15,000 in such a short space of time.

I acknowledge that HSBC did try to get evidence from the retailers but that nothing was forthcoming. But given the lack of evidence from the retailers, and that the evidence I have seen does not to me suggest that Mr W was aware of these payments, I remain satisfied that it's not fair or reasonable to conclude that he either made the payments himself or consented to them being made. So as set out in my provisional decision, I find that it was not reasonable for HSBC to hold Mr W liable for these payments.

Putting things right

Having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mr W's complaint for HSBC to put things right by:

- Refunding to Mr W's estate the payments made to H and S on 16 and 17 December 2019.
- Pay Mr W's estate 8% simple interest* on those payments from the date they were

made until the date of settlement

*If HSBC considers that it's required by HMRC to deduct tax from this interest it should tell Mr W's estate how much it has taken off. HSBC should also give Mr W's estate a certificate showing how much tax it's taken off if it asks for one.

My final decision

I uphold this complaint. HSBC UK Bank Plc should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr W to accept or reject my decision before 12 October 2022.

Sophie Mitchell
Ombudsman