

The complaint

Mrs P complains that HSBC UK Bank Plc won't refund her for transactions she says she didn't make or agree to.

What happened

Mrs P held an account with HSBC. In late 2019 she left the country, taking her debit card (Card 1) with her. In September 2021 HSBC issued a new debit card for her account (Card 2), which was activated in October 2021.

In December 2021 Mrs P contacted HSBC to let them know fraud had occurred on her account. She said she hadn't made any transactions on her HSBC account since she left the country. She believed she had lost over £20,000 across both cards, and the account had been left overdrawn. She said she was stuck abroad with no funds available. She asked why Card 2 had been issued as she hadn't requested it.

HSBC declined to refund the amounts to Mrs P, as they felt Mrs P's son had carried out the transactions. They told her they could not raise a fraud claim as it was a civil dispute.

Mrs P referred the complaint to our service. One of our investigators looked into what happened – and felt it should succeed in part. They felt if Card 1 was in Mrs P's possession they couldn't see how someone other than her, or someone with her permission, could have completed the transactions with that card. But they said that the transactions made with Card 2 were likely made by someone else without Mrs P's authorisation, as she was outside the country so wouldn't have had access to this card.

The investigators asked for the transactions on Card 2 to be refunded, along with 8% simple interest from the date of transaction to the date of settlement. They also suggested removing any interest and charges caused by the account being overdrawn, and for the removal of any negative information from Mrs P's credit file.

HSBC agreed to refund the transactions made on Card 2. But Mrs P disagreed, saying she didn't agree to the payments. She said she had been left stranded abroad and had to approach a loan shark to get funds to return home.

As no agreement could be reached the complaint has been passed to me to decide.

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.

Having done so, I've reached the same conclusions as the investigator. I'll explain why in more details.

When the facts of a case are unclear, I have to base my decision on what I think it more likely than not to have happened. I'm required to take in to account the relevant law, regulations, guidance and standards – as well as what I consider to be good industry practice at the time.

The most relevant regulations to Mrs P's complaint are the Payment Services Regulations 2017 (PSRs). In general, these regulations require banks to refund customers if they didn't agree to payments being made from their account.

But the PSRs can allow someone acting on behalf of Mrs P to authorise payments from her account. Where it appears to the bank that the payments are being made by someone with authority from Mrs P then they can treat these payments as authorised. This can be the case even if the third party has taken more than Mrs P expected, as by giving the third party access to the payment details is enough for them to act on her behalf.

Payments made using Card 1

In this case the disputed payments made using Card 1 went to the same online merchant. Whoever was using this card wouldn't have needed the physical card – which was with Mrs P – only the card details, such as the 16-digit number, the CVV and the registered address.

HSBC haven't retained the information of what devices the payments were made from, or other details such as IP addresses. But looking back through Mrs P's statements I can see there were payments made to this merchant previously. This suggests to me the card details were saved in some way – either on a device, or with the merchant. I can also see the merchant refunded several payments back to Mrs P's account. Whoever was using the card was taking care to manage the account – they weren't looking to spend as much as possible in a short space of time.

Mrs P's accounts received income from SEISS grants during this period – which is something Mrs P would have needed to apply for each time. But as she was out of the country, she wouldn't have needed to make use of these funds. I can't see a reason for her to do this, unless she was aware of someone else being able to make use of the funds.

Likewise, there are regular payments out of the account to HMRC, that Mrs P has confirmed she did. Before making these payments, it seems she ought reasonably to have been aware of the balance on the account – and if it was less than she expected then she could have reported it to HSBC at the time.

This leads me to conclude that it's more likely than not the card details were likely being carried out by someone Mrs P had given access to a system with the card details stored, or to the merchant account itself. There isn't a clear explanation of how this could have happened otherwise. In these circumstances it's not unreasonable for the bank to treat them as authorised payments – and in line with the PSRs can decline to refund them.

I've considered whether HSBC should have noticed the pattern of transactions and taken steps to question Mrs P about these. But ultimately while there were a lot of transactions leaving the account, they were for relatively small value to a merchant Mrs P had used in the past. The account balance was kept quite healthy throughout the usage of Card 1. So, I don't see there were any obvious signs that Mrs P might be falling victim to financial crime that HSBC missed.

Payments made using Card 2

The payments made with Card 2 I see as different to those made with Card 1. Before the card could be used it needed to be activated. This was an automated process over the phone, so HSBC haven't been able to provide records of what steps were needed to activate the card. But it seems accepted by both parties that Mrs P was genuinely unaware of this card being issued, and it was activated and used without her knowledge or consent.

There was a suggestion from HSBC that some payments that Mrs P doesn't dispute in November and December 2021 were carried out using Card 2, but they've now confirmed these were carried out using Card 1.

For these reasons I don't see that Card 2 was a valid payment instrument for Mrs P's account, so any payments made with this card can't have been properly authorised as per the PSRs. As such they should be refunded to her, along with 8% simple interest.

Mrs P has asked why the card was issued as she hadn't requested one. HSBC have explained that they will often issue cards when the previous one is due to expire. It's not unusual for cards to be issued when the previous one is due to expire – and it is possible to use both cards for the one account. This is generally to ensure there's no interruption to people being able to use their debit cards. I don't consider this to be particularly unusual.

I've seen nothing to suggest Mrs P let HSBC know not to send a renewal card while she was away. It appears it was intercepted by someone who knew enough about Mrs P and the account to go through the verification process. I appreciate this will have caused Mrs P some distress to find out her account had been accessed in this way. But I'm also mindful here that most of the distress is caused by actions of the person who intercepted the card, not HSBC. I'm not minded to suggest compensation for this, or for any service she received.

Likewise, Mrs P has said that as she couldn't access her funds, she had to take an informal loan out from a loan shark. But she hasn't been able to provide any documentation to show what was agreed – or what any potential losses from this could be. Without supporting evidence, I can't fairly ask HSBC to pay for the costs of any loan taken.

In any event, I can see that Mrs P was making use of her HSBC to support her while she was abroad – there had been no international transactions in the two years before the disputed transactions were reported. And I can see from the statements she made two transactions of £1,000 using a money transfer service using Card 1 in December 2021. But it doesn't appear that Mrs P returned to the UK until February 2022.

But the unauthorised transactions using Card 2 left Mrs P overdrawn, and it's not fair to hold her liable for any costs associated with this, or for any markers on her credit file.

My final decision

My final decision is that I uphold this complaint, and HSBC UK Bank Plc must:

- Refund the disputed transactions made on Card 2
- Add 8% simple interest per annum to this amount, from the dates of payment to the date of settlement. If HSBC is required by HMRC to pay tax on this interest they should provide Mrs P with a certificate showing how much has been deducted, if she asks for one.
- Refund any interest and charge accrued from the account going overdrawn.
- Remove any negative information about the overdraft from Mrs P's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision before 6 July 2023.

Thom Bennett
Ombudsman