

The complaint

Mr R has complained that HBL BANK UK LIMITED (also known as Habib Bank Limited) won't refund transactions he says he didn't make or otherwise authorise.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

In November 2020, Mr R's card and PIN were used for a number of cash machine withdrawals and point of sale transactions abroad, in and around the place where he was staying. On his return to the UK, Mr R queried these transactions with HBL, saying he didn't recognise them.

Mr R's card was then used for a number of payments to a cryptocurrency platform, mostly for large amounts.

Mr R has explained that his card was in his possession the whole time, and he had not written down his PIN or told it to anyone. He thought his card had been cloned. He was also unhappy that HBL later closed his account.

HBL held Mr R liable for the payments in dispute, mainly on the basis that the transactions had all been properly authenticated.

Our investigator looked into things independently and partially upheld the complaint. They found it was most likely that the transactions abroad had been made with Mr R's consent. But they found that HBL had not evidenced that Mr R had consented to the cryptocurrency payments, so they recommended that those be refunded.

Neither party agreed. Mr R felt sure his card had been cloned abroad, and HBL wanted the case to be kept on hold as they hadn't been able to get in touch with the cryptocurrency platform. The complaint's 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.

First, I'll consider the ATM and point of sale transactions that were made abroad.

HBL's technical evidence shows that those payments used Mr R's genuine card, and the correct PIN. They were not made using a cloned card, as Mr R suggested. So I'm satisfied that those transactions were properly authenticated. The question, then, is whether the evidence suggests it's most likely that Mr R consented to those payments, or not.

Mr R has confirmed that his card was with him the whole time, and that he still had it afterwards – which I can see is the case as he used that card for genuine payments after the disputed ones. However, the ATM withdrawals and point of sale payments were made using Mr R's physical card. And it's not likely or plausible that a fraudster would give Mr R his card back after stealing it – that would drastically increase their chances of getting caught while actively stopping themselves from stealing as much as they could have. It's also unlikely that they'd be able to find Mr R hours later, or that they'd be able to put his card back in his pocket without him noticing anything wrong.

Moreover, those payments were made using Mr R's PIN. He's confirmed that he hadn't written down his PIN or told it to anyone, so a thief couldn't have learned it that way. And it's not likely that they would happen to guess it correctly on the first try. It's sometimes possible for thieves to learn someone's PIN by watching them enter it previously. But here, the disputed payments started several hours after Mr R's last use of the PIN. And it's not very likely that a thief would overlook him entering his PIN, then wait so long to steal the card, nor that they'd steal the card at the time and then wait so long to use it. So there doesn't seem to be a likely way that someone knew Mr R's PIN without his permission.

I might have expected a thief to try to take as much money as possible, as quickly as possible, before the card gets blocked. But here, the person using the card did not take nearly as much as they could have, then they stopped using the card entirely despite leaving a very large balance in the account. This does not fit well with the possibility of fraud.

On the other hand, the payments abroad were very similar to Mr R's genuine payments in terms of locations, amounts, and so on. And customers do sometimes forget payments they have made and then mistakenly dispute them. I've not seen any evidence that makes it seem implausible or unlikely that Mr R could've authorised these payments or given someone else permission to make them on his behalf.

So it doesn't seem likely or plausible that the payments abroad were unauthorised. But it does seem both likely and plausible that they could have been made with Mr R's consent. So on that basis, I don't think I can fairly tell HBL to refund them.

I'll now turn to the cryptocurrency payments.

HBL have shown that the cryptocurrency payments were authenticated using Mr R's card details. But again, that is not enough – on its own – for HBL to hold Mr R liable for them. They also need to be able to evidence that Mr R *consented* to those transactions.

To explain, the onus is on HBL – rather than Mr R – to evidence that HBL are entitled to hold him liable for these disputed payments. And I appreciate that it may be frustrating for HBL that they've not had a response from the cryptocurrency merchant. But this is the sort of information they should have gathered at the time, before we asked for it. And we've given HBL numerous deadline extensions, stretching far beyond our standard timescales. We are required to resolve complaints quickly and informally, so we would not look to keep a case on hold indefinitely. And we are impartial, so it would be unfair for me to give HBL special treatment in that regard. Our last deadline has passed, so I will decide this complaint based on the evidence I have.

The cryptocurrency payments were made using Mr R's card details. Contrary to HBL's arguments, this does not require the physical card – just the card details. Indeed, these types of payments are commonly known as “card not present” transactions.

There are a number of possibilities for how someone could have gained Mr R's card details without his permission, such as if a merchant he'd previously given his card details to got compromised. And I've not seen any evidence which shows that two-factor authentication was used here. So it seems both likely and plausible that these payments could have been made without Mr R's consent.

The cryptocurrency payments were made for large and repeating amounts. When payments got rejected, the person making them then tried lower ones to get them through. This looks consistent with someone trying to take as much as they could.

Indeed, the person making these payments was still attempting them at about the same time Mr R was on the phone to HBL telling them to block his card. Then they kept on trying more cryptocurrency payments, including trying different platforms, after Mr R had got the block put in place. This also suggests that these payments were being attempted without Mr R's permission. It is not especially likely that he'd block his own payments while in the middle of making them, nor that he'd try further payments knowing he'd already blocked his card.

HBL pointed out that one needs an account with the cryptocurrency merchant in order to use their platform. But broadly anyone can make an account. HBL have not provided any evidence that this was *Mr R's* account. Meanwhile, I've not seen any evidence that Mr R benefitted from these payments in any way, such as from a pay-out. And when Mr R asked the merchant for proof of whose account it was, they declined to deal with him, which if anything tends to suggest it probably wasn't his account.

HBL also pointed out that in his dispute form, Mr R mixed up one of the cryptocurrency payments with a genuine payment of a similar amount, and that he didn't list one of the smaller cryptocurrency payments. But it's pretty clear that this was just an oversight and a mix-up. Mr R has otherwise been clear and consistent that he disputes all the cryptocurrency payments from November 2020.

Taking into account everything that's been said and provided, I'm not persuaded that Mr R consented to the cryptocurrency transactions. And I've not seen anything which shows that those transactions were made due to any gross negligence on Mr R's part, nor any intentional failure to keep his account safe. So I don't think HBL can hold him liable for them.

Lastly, I appreciate that Mr R is unhappy that HBL closed his account. But much like Mr R can decide who he banks with, HBL can broadly decide who banks with them. I can see that following this incident, Mr R withdrew his money, which took the account below the minimum balance. And HBL gave him the appropriate amount of notice before closing it. So I can't see that they did anything wrong there.

Putting things right

I direct HBL BANK UK LIMITED to:

- refund all the cryptocurrency platform payments made in November 2020;

- pay simple interest to Mr R on those transactions, at the rate of 8% simple a year, payable from the date they were last debited until the date they're returned[†]. This is to compensate Mr R for the time he didn't have his money.

[†] HM Revenue & Customs requires HBL to take off tax from this simple interest. HBL must give Mr R a certificate showing how much tax they've taken off if he asks for one. Mr R may then be able to claim the tax back from HMRC if he does not normally pay tax.

My final decision

For the reasons I've explained, I uphold Mr R's complaint in part, and direct HBL BANK UK LIMITED to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 21 November 2022.

Adam Charles
Ombudsman