

The complaint

Mr M complains that HSBC UK Bank Plc (“HSBC”) have failed to refund transactions made from his account that he says he didn’t authorise.

What happened

Mr M says he fell victim to a scam in November 2021 as transactions had been made from his account that he didn’t recognise. He believes the unauthorised payments came about as a result of him being scammed by a website impersonating FTX cryptocurrency (a legitimate crypto platform that has since become insolvent). He registered his details on the website and said he had to verify his bank account through Safecharge Limited (a legitimate payment processor) by entering some details.

Mr M said he made a few deposits to his trading account for amounts such as £1,000, but later found that eight larger payments (such as £5,000 and £30,000 on) had left his account between 23 November 2021 and 22 December 2021, which he reported to HSBC and said he didn’t authorise.

Mr M told HSBC he was concerned that someone had accessed his bank account using the details he entered as part of the verification process he followed. He also says he was vulnerable at the time and more susceptible to falling victim to a scam.

HSBC refused to provide Mr M with a refund. It said the payments had been made via open banking and had been authorised, and that it couldn’t have been authorised by anyone else as he said he hadn’t shared any of his security credentials.

Our investigator didn’t uphold the complaint. She noted that Mr M’s testimony had changed, as he originally disputed eight payments with the bank but then later said he recognised four of these. The investigator thought it was likely that Mr M had authorised all the transactions and didn’t think HSBC ought to have intervened or prevented the payments he made. Mr M disagreed, so the matter has been escalated to me to determine.

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 agree with the conclusions reached by the investigator and have decided not to uphold it.

When considering what’s fair and reasonable, I am required to take into account relevant law and regulations; the regulator’s rules, guidance and standards, the codes of practice; and, where relevant, what I consider to have been good industry practice at the relevant time.

The disputed transactions complained about took place in November 2021, so of particular relevance to my decision are the Payment Services Regulations 2017 (PSRs) – which apply to transactions like the one made from Mr M’s account.

The PSRs say that a payment transaction is authorised by the payer where they have given their consent to the execution to the payment transaction. Such consent must be given in the form and in accordance with the procedure agreed between the payer and the payment service provider.

Unless the payment service provider can show consent has been given, it has no authority to make a payment or debit the customer's account. Where a payment service user denies having authorised a payment transaction, it is for the payment service provider to prove that the payment transaction in question were authorised by the customer.

Having considered the facts before me as well as the relevant law, it seems to me that the key question I need to determine here is whether it is more likely than not that Mr M authorised the transactions. In other words, I need to decide whether Mr M made the transactions himself or gave someone permission to do so. This is important because a customer will usually be liable for payments they've authorised and, generally speaking, a bank will be liable for any unauthorised payments.

In this instance, the disputed transactions were made via open banking. After originally disputing eight payments, Mr M says that there are now only three transactions (for £5,000, £7,000 and £3,000) that were entirely unauthorised or were for different amounts that he thought he was authorising. But having considered the evidence, I think it's more likely than not that Mr M authorised all the disputed payments. I'll explain why.

Mr M says he first attempted to report an unrecognised transaction for £5,000 on 23 November 2021 via online chat. But he didn't pursue the matter any further and said he was going to check with his family before calling to report it as fraud. He then failed to follow up on this until over a month later, even when other transactions were being made from his account that he says he didn't authorise.

During this time, Mr M's device had been used to login to his online banking both during and after some of the other disputed payments had been made. So, it seems likely he would have seen the other payments being made from his account long before he reported them on 26 December 2021.

I appreciate that a different device was used to make the payments. But HSBC has said that open banking payments would require security credentials to be used to allow the payment to be successfully authorised, and that Mr M had used this method of payment in the past. However, Mr M says that he didn't divulge any banking information or security details to anyone. He initially told HSBC that he hadn't generated any security codes or given this to any third party either, and neither had he received any emails or messages with links. But he has since said that he *did* enter a security code from the HSBC app when he was making smaller payments of £1,000 (which he thought he was making to his trading account in increments of £1,000 at a time).

So, this leads me to believe that Mr M was likely aware that payments were being made from his account and that he had authorised them with his security credentials. Mr M has said himself that he struggles with his memory and had started taking a higher dose of medication at the time, so I accept its possible he may not recall making all the payments or remember the exact amounts he had authorised. He has also changed his testimony during his complaint, as he initially disputed eight payments as unauthorised when he called HSBC on 26 December 2021, but has later clarified that he does recognise at least four of these payments (including a £30,000 payment made on 29 November 2021).

So, in light of Mr M's inconsistent testimony, and based on the evidence I've seen, I'm satisfied that the disputed payments were more likely than not to have been authorised by

Mr M himself. He said he did not share his login details with anyone, and the evidence provided by HSBC in the form of its online banking logs also does not suggest that anyone else was able to gain access to Mr M's banking app to authorise the use of open banking. So, the only plausible conclusion is that either Mr M made the transactions himself, or gave his details to somebody else, thereby giving his consent and authority for payments to be made on his behalf. I appreciate that Mr M disputes this but given no one else had access to his login details, there is no other more plausible explanation for how the payments could have otherwise been made.

On the basis that the payments were all authorised by Mr M, I've gone on to consider whether HSBC should have done more to prevent Mr M from making them and stopped him falling victim to a scam, as there are some situations in which a bank should reasonably have had a closer look at the circumstances surrounding a particular transfer. For example, if it was particularly out of character.

However, I would need to be satisfied that FTX was operating a scam when these payments were made in November 2021 in order to expect HSBC to have done anything further here. FTX was a legitimate cryptocurrency exchange that has since become bankrupt, but there's no evidence to suggest it was operating a scam. Mr M says he thinks he was dealing with a clone of FTX. But it's not clear why he thought this, and he hasn't been able to provide any evidence of interactions between him and an alleged scammer to show how the payments came to be made. So, I'm not persuaded there's enough evidence to demonstrate that Mr M was the victim of a scam here, meaning that HSBC would've had no duty to intervene.

Even if I were to accept that Mr M did lose his money to a scam and that the bank ought to have intervened, I don't think any such intervention would've likely prevented him from making the payments in any event. Mr M was an experienced investor and had a history of making large payments to trading platforms and cryptocurrency websites. There were no warnings online that I can see about FTX at the time or of a potential clone website, so if HSBC had asked Mr M to carry out further research, I don't think he would've likely found anything significant that would've made him think he was being scammed. Therefore, I don't think HSBC could fairly be held liable in these circumstances, even if Mr M had been scammed.

Mr M says he was vulnerable at the time, as he has been diagnosed with several conditions and was taking medication. I appreciate that this would've likely been a difficult time for Mr M. But I've not seen any evidence to suggest that his conditions meant he lacked capacity to understand what he was doing, or that he was incapable of running his financial affairs. Indeed, Mr M was still investing at the time and making large returns from his other investments. There were no other parties who had authority to act for him with regards to his bank account, and HSBC has said it has no record of having been made aware of any vulnerabilities in any event. So, I don't think there was any obligation on HSBC to have prevented the payments from being made due to any vulnerability concerns.

I've also thought about whether HSBC did enough to seek to recover the funds after Mr M reported that he had been the victim of a scam. I can see that HSBC emailed both the domestic and international banks that received the funds, but I can't see that any response was received. As Mr M didn't dispute the payments until sometime after they'd been made, it seems unlikely that any funds would've remained in any event. And given HSBC reached out to the receiving banks when the fraud was reported, I don't think there was anything more it could have done in these circumstances.

My final decision

For the reasons given above, I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 May 2023.

Jack Ferris
Ombudsman