

## **The complaint**

Mr P has complained that HSBC Bank Plc has unreasonably refused to refund him a total of £11,127.25 of disputed transactions when his drinks were spiked when he was abroad. Mr P says he doesn't remember doing any of these transactions.

## **What happened**

Mr P was abroad and visited a nightclub on 16 April 2022. He ordered some drinks and thought he was due to pay £60 odd but found out later he was charged over £600.

He also later found out that several more transactions had been done on his card during that evening without his knowledge. They totalled over £11,000. He only found this out because HSBC sent him a text about pending transactions to which he answered 'N'. Mr P said he was then instructed to contact HSBC which he did where his card and PIN were cancelled. Mr P still had his card on his person. And he said he was told HSBC would contact him the following day. At this stage the transactions were still pending. He didn't receive the call so phoned twice chasing the fraud team. Then he noticed the transactions left his account on 19 April 2022.

HSBC phoned him on 20 April 2022 and ultimately decided not to refund the transactions. He felt his drinks had been spiked as he had no recollection of these transactions occurring bar the initial one for the £60 odd. The police also explained this could be a possibility as it was a fairly common occurrence in the country he was visiting.

So, Mr P brought his complaint to us. The investigator partially upheld his complaint. The disputed transactions took place over a two-and-a-half-hour period, increasing in value all the time. He felt HSBC should have intervened earlier given the unusual spending pattern. Therefore, he was of the view that HSBC should refund a total of £9,801.79 plus interest and pay Mr P £100 compensation.

Mr P agreed but as HSBC didn't Mr P's 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'm upholding this complaint along the same lines as the investigator. I'll now explain why.

Given Mr P had his card the following day and it wasn't lost or stolen, I don't consider a fraudster would have taken his card and done the transactions and then put his card back again. The Payment Service Regulations (PSR's) are clear that being drunk or drugged doesn't invalidate Mr P consenting to these transactions which appear both authorised and authenticated. So, I consider the transactions were authorised under the PSR's on the

unlikeliness of a fraudster taking the card and then putting it back. And they were authenticated because the chip and PIN were used.

And sadly although Mr P thought the first transaction should have been the cost of drinks at £68.00, the fact that £681.27 was debited instead is not something the PSR's hold a bank liable for as it is the responsibility of the consumer, Mr P here, to check the terminal for the amount before completing the transaction by inputting the PIN.

The transactions happened as follows:

- 17/4/22 at 02.25 £618.27 + £18.73
- 17/4/22 at 03.11 £626.06
- 17/4/22 at 03.32 £1,311.03
- 17/4/22 at 04.05 £1,504.57
- 17/4/22 at 04.30 £1,842.84
- 17/4/22 at 05.00 £5,142.75
- 17/4/22 at 05.30 £5,367.14 which was declined due to insufficient funds
- 17/4/22 at 05.32 £3,033.63 which HSBC's system declined for potential fraud

Looking at the pattern of these transactions, while the transactions were all authorised with the chip and PIN, it does look like something untoward was happening here. I've seen no compelling evidence Mr P was purchasing goods or services for such a high value. And the value of spending is very out of character for the account from the statements. So, I think it more likely than not Mr P was authorising the transactions, but he was being presented with significantly inflated amounts in an unfamiliar currency.

The PSR's state that a bank is supposed to process authorised and authenticated payments without delay. However, it is good industry practice that banks have systems in place to monitor accounts and counter such risks as money laundering, financing terrorism, and preventing scams and frauds, regardless of which payment channel is used too. These systems should look for unusual transactions or unusual patterns of spending so that not only are payments declined due to insufficient funds but also declined to protect consumers from the considerable and increased risk of frauds or scams which the media reports virtually daily.

Like the investigator I think HSBC's systems could have stepped in earlier to protect Mr P's account. Whilst Mr P has made large transactions in the past, we can see from his statements that those transactions were made on line and made one at a time not several debit card transactions over such a short period of time like here, or indeed when Mr P was abroad.

HSBC said in its response to the investigator's view that the transactions were not fraudulent because it was Mr P doing the transactions. HSBC's systems are a fraud detection system so isn't there to prevent genuine consumers from transacting. It did pick up when the transaction pattern began to mirror that of potentially fraudulent usage. It didn't agree that this service could interfere on how to operate its fraud detection systems. However, like the investigator said, I consider this sort of experience Mr P had is relatively common and put Mr P at risk of financial harm. This type of scam is well known to this service and obviously the banks too. And in the particular circumstances of this complaint I consider it's reasonable to

consider if HSBC could have done more to protect Mr P from financial harm given it did finally detect the potentially fraudulent usage and stopped it continuing.

Mr P has confirmed that the police investigation is still continuing. If he had been spiked as he believes he was, any toxicology report may be fairly worthless since the drugs which tend to be used to spike are those that leave the body quickly so there is difficulty in detecting them.

So, I consider it is reasonable to conclude that HSBC could have moved quicker to protect Mr P from financial harm. By the third transaction, the amounts being debited had doubled, and in just over an hour. So, in the circumstances I would expect HSBC to take action by the third transaction and attempt to gain an understanding of the activity on his account. If they had done so, I think it likely Mr P would have realised he was being overcharged and left the premises.

I've also considered whether Mr P should bear some responsibility for the loss. He already is bearing some responsibility here, as I'm not asking HSBC to refund the first two transactions. Mr P's recollection of what happened isn't complete. But I'm not persuaded that Mr P missed any obvious warning signs that he was being overcharged – being that in the circumstances he was using an unfamiliar currency. In any event HSBC have more knowledge and experience in these types of cases to notice when something is going wrong. On that basis I'm not minded to make any deduction for any contributory negligence, in this instance.

Therefore, in the particular circumstances of this complaint I consider it's fair and reasonable for HSBC to refund Mr P from the third transaction onwards adding interest. That amounts to a total of £9,801.79 plus interest.

I also consider a payment of £100 compensation to Mr P for the inconvenience caused by HSBC not stepping sooner is also fair.

### **My final decision**

So, for these reasons it's my final decision that I am partially upholding this complaint.

I now require HSBC Bank Plc to do the following:

- Refund Mr P the sum of £9,801.79.
- Add interest of 8% simple per year from the date of the transactions to the date of the refund. If income tax is to be deducted from the interest, appropriate documentation should be provided to Mr P for HMRC purposes.
- Pay Mr P the sum of £100 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 27 June 2023.

Rona Doyle  
**Ombudsman**