

## The complaint

Mr C complains that HSBC UK Bank Plc did not refund two transactions that he says he did not carry out himself.

## What happened

Both parties are aware of the circumstances of the complaint, so I won't repeat them again in detail here. In summary, Mr C raised a fraud claim with HSBC and said he thought he'd been poisoned by colleagues on 27 November 2021 on a night out after work and as a result, a transaction that he says he did not authorise left his account that evening for £9,899 and another for £9,950 left on 29 November 2021. When he reported this, the representative from HSBC explained a third payment to the same payee had been set up, which Mr C asked to be cancelled.

HSBC issued a final response letter in which they explained they could not identify a point of compromise for the fraud, so they felt Mr C was liable for the payments and did not agree to refund them. Mr C referred the complaint to our service and our Investigator looked into it but felt it was more likely Mr C authorised the payments, as they occurred over a period of a few days, so there had to be multiple points of compromise, which didn't tie with the evidence. So they did not uphold the complaint.

Mr C disagreed so the complaint was passed to me. I issued a provisional decision which read as follows:

*Generally speaking, HSBC is able to hold Mr C liable for the disputed transactions if the evidence suggests it's more likely than not that he made or authorised them himself. This position is confirmed in the Payment Service Regulations 2017 (PSRs) and the terms and conditions of his account.*

*From what I've seen, the payments were made using Mr C's mobile phone app. While this is important, it isn't enough on its own to say Mr C is liable for the transactions. HSBC also has to show it's more likely than not that Mr C himself made or otherwise authorised the transactions.*

*Mr C has been consistent in his testimony about what happened on 27 November 2021 and says he approached the police, however there is no medical evidence or police notes for me to consider. I have focused on whether I think HSBC has done enough to show its more likely than not that Mr C made or otherwise authorised the transfers himself. In doing so, I've considered Mr C's testimony as well as the evidence available, and having done so I find Mr C's version of events plausible.*

*As has already been highlighted, Mr C's phone and app could be accessed by biometrics, including his fingerprint. With this in mind, it was possible for a third-party to access his mobile banking app and set up the initial and future dated payments with no intervention by HSBC as long as they had access to Mr C's biometrics. And all of the payments were set up at the same time, with only one point of compromise. Mr C has said he was incapacitated at the time, so it was possible for someone to use his biometrics to access both his phone and*

app.

*HSBC has now provided evidence that Mr C first contacted them about the initial disputed transaction on 28 November 2021 at around 9pm. It appears that his online banking was suspended as a result to safeguard the account. This was then re-activated around 6am on 29 November in order for Mr C to make a credit card payment from his account. On balance I think this supports Mr C's testimony that he reported the fraud when he saw the first transaction on 28 November, and that he was unaware of the future dated payments that had been set up.*

*I think it's likely that, had Mr C known about the future dated payments, he would have asked for them to be cancelled on 28 November when he first contacted HSBC. And I think the fact the third payment was only cancelled when he telephoned HSBC on 29 November supports this. And as a result, I think it's more likely Mr C did not carry out the transactions or set up the future dated payments himself.*

*Based on what I've seen so far, I'm persuaded that what Mr C has said is plausible and there is no evidence to suggest he consented to the payments, or otherwise authorised them. And I'm currently minded to uphold the complaint and recommend a full refund, along with 8% simple interest on each payment from the date of the loss to the date of settlement.*

Mr C responded and accepted my provisional findings.

HSBC responded and did not agree. They said that they had reached out to the beneficiary bank, who had no fraud concerns about their customer.

### **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.

I've considered HSBC's additional comments around the fact that the beneficiary bank had no concerns about the account holder. While this can be a factor, I don't think that in this particular case it means no fraud has occurred or that Mr C authorised the transactions.

In this particular case, according to Mr C's testimony, the transactions occurred as a result of a colleague happening to see Mr C's account balance, and opportunistically carrying out unauthorised transactions as a result. Because of this, I would not necessarily expect the beneficiary account to appear to have a known pattern of fraud. So, the fact that the beneficiary bank did not have concerns does not materially change the findings set out in my provisional decision.

On balance, I am still of the opinion that what Mr C has said is plausible and there is no evidence to suggest he consented to the payments, or otherwise authorised them. I therefore think this complaint should be upheld and HSBC UK Bank Plc should refund the £19,849 and pay Mr C 8% simple interest on each payment from the date of the transaction to the date of the settlement.

If HSBC considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr C how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

**My final decision**

I uphold Mr C's complaint and direct HSBC UK Bank Plc to pay the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 8 March 2024.

Rebecca Norris  
**Ombudsman**