

The complaint

Miss M has complained HSBC UK Bank plc won't refund £2,000 for a payment she didn't make.

What happened

Whilst in a nightclub Miss M had her phone stolen, along with her national ID and her debit card with another bank (who I'll call R).

A week later Miss M received a fraud alert from HSBC about a payment to an unknown third party for £650. She called HSBC and confirmed this hadn't been her, and that her mobile had recently been stolen.

She discovered a further payment of £2,000 had been made to the same unknown person, before the payment she was asked to authorise. She told HSBC this hadn't been her. HSBC were unsure how her mobile phone PIN could have been known by a third party and turned down her claim.

Disappointed, Miss M brought her complaint to the ombudsman service. Our investigator reviewed the evidence Miss M brought in support of her complaint. He found this balanced the complaint in Miss M's favour and asked HSBC to refund her.

HSBC refused. They couldn't see how the compromise had taken place. They've asked an ombudsman to review Miss M's complaint.

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 outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to Miss M's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. Other factors do apply but nothing else specific in Miss M's case.

So to help me decide what happened, I've looked at the evidence of the transactions, as well as what HSBC and Miss M have told us. Our investigator shared quite a bit of Miss M's evidence with HSBC at the time he told them he felt they should uphold the complaint.

I can reassure HSBC I've considered the points they made following our investigator's view.

Overall I believe the evidence shows Miss M didn't authorise the disputed transaction. I say this because:

- I'm in no doubt the evidence shows Miss M's phone was stolen. This stolen phone was used, at a later date, to authenticate the transactions.
- According to HSBC's limited records, Miss M normally used biometrics to access her phone. For the period of the two disputed transactions on 14 October 2022, her phone was accessed using a six-digit PIN.
- HSBC say there's no evidence how an unknown third party would have known Miss M's PIN. I don't dispute that. But I can see the fraud happened a few days after Miss M's phone was stolen so it is possible that it took some time for the phone to find its way into the hands of someone who was able to uncover Miss M's PIN successfully.
- HSBC has brought no evidence to suggest Miss M was grossly negligent (as they are required under the PSRs) so I find their suggestions that she was lax with her personal security concerning. It feels as if they are suggesting something without any evidence to back this up.
- There's no dispute that Miss M contacted HSBC after they alerted her of potential fraud on her account. She ensured a payment for £650 was not made. She wondered why she'd not received an alert for the payment of £2,000 made just 15 minutes earlier. I've looked at this aspect on her account, but I believe HSBC's action to alert her about the second payment, to the same recipient, and which would have effectively emptied her account, was fair.
- Miss M's other account was with R. Her debit card was stolen at the same time as her phone. I've seen that R blocked her card to limit fraudulent use. And that fraudulent use was attempted.
- HSBC is aware Miss M ensured the second payment was unauthorised, so I wonder why they believe she'd have authorised a payment of £2,000 to the same recipient just beforehand? This doesn't seem logical.
- Miss M reported her financial loss to the police who were able to confirm they weren't able to take the case further for jurisdictional reasons. If Miss M had been involved in the fraud, this would have been a risky thing to do.

I am always wary that just because there's no obvious point of compromise, that would mean the accountholder must have made the payment. This would seem to ignore what we know about fraud. I just need to be satisfied that there are scenarios which could explain how the compromise took place. I believe these exist here.

Based on the evidence, I am satisfied Miss M didn't authorise the transaction for £2,000.

Putting things right

HSBC will need to refund £2,000 to Miss M. This was a substantial amount in relation to the status of Miss M's HSBC account at the time. I think it's fair and reasonable they also add 8% simple interest to that amount for the time Miss M was without her funds.

My final decision

For the reasons given, my final decision is to instruct HSBC UK Bank plc to:

- Refund £2,000 to Miss M; and
- Add 8% simple interest to that amount from 14 October 2022 to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 22 September 2023.

Sandra Quinn
Ombudsman