

The complaint

Miss E complains that HSBC UK Bank Plc ("HSBC") failed to refund transactions from her account that she didn't recognise.

What happened

Miss E reported numerous unusual transactions from her account and initially believed it was someone who she knew who was responsible. She later didn't think this was the case and asked HSBC to look into the matter.

Various payments were made from her account, some were bank transactions involving payments into her account from another bank and payments to that same bank (where Miss E also held an account). Other unrecognised payments were to a variety of gambling merchants and used Miss E's debit card to carry out the transactions.

Miss E denied any involvement in the payments made to and from her account. Based on Miss E's claims at the time, HSBC made a refund to her. The amount paid was to ensure Miss E's account was in balance after the movement of funds. Essentially she was put back to the same position she started with in relation to the unrecognised banking transfers.

Miss E continued to deny any knowledge about the debit card payments made from her account. In total, the disputed transactions amounted to £8,085.98 which also included a few small transactions to a non-gambling merchant. Miss E's account received £7,000 from the gambling merchants in payments (presumably winnings). This meant that Miss E's account was £1,085.98 in debit based on the payments and credits to her account.

Miss E sought a refund from HSBC who looked into what had happened. Miss E explained that she was out of the country when most of the disputed transactions took place and only noticed them towards the end of her trip. She was told that another phone had been using her account and Miss E denied it was hers (it was a different model phone to her own).

HSBC thought that Miss E was responsible for the payments and declined to make any further refunds to her. Unhappy with their response, Miss E brought her complaint to the Financial Ombudsman Service for an independent review. Her complaint was assigned to an investigator who asked both parties for information about what had happened.

Miss E repeated her story and continued to deny any involvement in the gambling transactions. She said that the other phone using her account was unknown to her. At the time, she'd thought it may have been a close friend, but later didn't think this was the case. Miss E confirmed her phone was protected with security and she hadn't given it or her banking details to anyone else.

HSBC continued to believe Miss E was responsible and carried out enquiries with the gambling merchants. Information from them indicated that accounts had been set up using Miss E's name and her address details. But the phone and email addresses used to open the accounts were different to ones used by Miss E.

HSBC argued that the additional device registered on Miss E's banking couldn't have been added without her knowledge. They said that in order to add another device required actions on the original device, so it was unlikely Miss E wouldn't have been aware of this second device being authorised to use the account. Also, that most of the disputed transactions were made using additional security. This security required a One Time Passcode (OTP) to be agreed to before the transactions went through. In each case, the OTP was accepted, and HSBC say that this would have gone to Miss E's original registered device.

After reviewing the information about the complaint, the investigator thought that Miss E wasn't responsible for the disputed transactions, and it was plausible for someone to have obtained her banking details (such as her close friend) and additional authentication wasn't required for the transactions.

It was also remarked that the disputed transactions took place over the same period as the other disputed bank transfers which were refunded, Miss E hadn't previously used gambling merchants and some of the details didn't match her usual email or phone number.

HSBC disagreed with the investigator's outcome and continued to argue there was no evidence to suggest Miss E's account had been compromised. They highlighted data that showed a common IP address used prior to the disputed transactions that was linked to Miss E's usual use of the account and those that were made by the additional device to make the disputed transactions.

Note: IP addresses are a means to identify physical locations that online transactions are connected to and can be the actual physical location or other locations connected to the provider of the data services.

HSBC argued that their evidence pointed to Miss E receiving the OTPs (although here Miss E denies receiving any of them). HSBC said that if the additional device had received them using the banking app, they would expect to see evidence of it logging in. No such evidence was present and the only device to log in was Miss E's which they thought would have alerted her to these transactions being made from her account.

I issued my provisional findings on the merits of Miss E's complaint on 4 September 2023. In my provisional findings, I explained why I didn't intend to uphold Miss E's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that HSBC can hold Miss E liable for the disputed payments if the evidence suggests that it's more likely than not that she made them or authorised them. HSBC can only refuse to refund unauthorised payments if it can prove Miss E authorised the transactions, but HSBC cannot say that the use of online payment details conclusively proves that the payments were authorised.

Unless HSBC can show that consent has been given, it has no authority to make the payment or to debit Miss E's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Miss E. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Miss E responsible for the disputed

transactions or not.

There are differences between both party's version of events, in summary Miss E states she knew nothing about the disputed transactions and HSBC believe she was responsible. It's not our role to say exactly what happened, but to decide whether HSBC can reasonably hold Miss E liable for these transactions or not. In doing so, and where there's a disagreement, I'll be considering what is most likely to have happened based on a balance of probabilities.

HSBC's evidence shows that two devices were being used with Miss E's account. Some of the disputed transactions were made whilst she was abroad and IP evidence shows the disputed transactions were being made in the UK. So, here I accept that it was someone else who was making the transactions. But, that doesn't automatically mean that Miss E wasn't liable for them. If, on balance, the evidence shows that these transactions were made with her knowledge, she would generally still be held liable. If on the other hand, there's a plausible explanation for someone else being responsible then Miss E would be due a refund.

HSBC have said they made the banking transfer refunds based on what they knew at the time. They've confirmed they don't intend to take those refunds back and as Miss E was left in the same position she started with (in relation to those specific refunds) I don't currently intend to look into them any further.

In relation to the card payments Miss E has disputed, they were carried out using a second device. Miss E denies any knowledge of that device, but evidence from HSBC shows the same IP address used to make transactions to the gambling merchants was also used by Miss E's usual device some months earlier. I think it's unlikely that the same IP address could have been used randomly by someone who later carried out these transactions without Miss E's knowledge.

HSBC have confirmed their system is designed to prevent the registration of another device without the user being aware of it. The user is also required to carry out certain actions before the second device can be authorised. Miss E has also stated she hadn't provided her banking details to anyone else. So, I can't see how someone unknown to Miss E could have carried out the registration without access to Miss E's device and the security information to log in to her account.

Regarding the OTPs, HSBC believe that Miss E's phone would have received them whilst she herself says she hadn't received anything. The OTPs can be delivered via a message to the registered phone or via an in-app procedure. HSBC can't definitively say which method was used, but they believe it was via message to Miss E's registered phone number. They don't think it was via an in-app procedure because that would generally need the device to log in to the banking app at the time. If, as Miss E believes, it was the other phone that was responsible, then I'd expect to see log ins to the banking app that correspond with the OTPs being sent out.

There's no such activity from the other device and the only one to log in is Miss E's usual device she had with her whilst abroad. So, the evidence points to those OTPs being sent to Miss E's device and the transactions couldn't have been carried out without the codes being actioned at the time. As Miss E was checking her online banking throughout the period of the disputed transactions, I'm also surprised they weren't seen sooner and reported to HSBC.

I accept that the email address and the phone number attached to the gambling merchants was different to Miss E's normal ones, but this on its own doesn't provide sufficient evidence that the disputed transactions were carried out without her knowledge as it's also apparent that there were others involved here making the transactions.

I also considered the fact that these payments were made to a gambling merchant. It's general practice for these merchants to only pay winnings back to the account they came from (as they did here), so those winnings would usually be locked away from an unauthorised user of the bank account.

I haven't looked into the refund made by HSBC related to the bank transfers any further because they were refunded. I did note though that the bulk of the winnings paid into the account were "available" if anyone else had unauthorised access to the account. By that I mean they were paid into the account and could have been transferred to another account if someone else had access to it without Miss E's knowledge. What actually happened is that further gambling took place until the account was run down and entered a small overdraft.

It's difficult to imagine a realistic scenario where unknown third parties were able to gain access to Miss E's account. I think it's implausible to conclude they weren't authorised without stronger evidence to the contrary. My current thoughts are that it's more likely than not that Miss E had knowledge of these transactions and that it's reasonable for HSBC to hold her liable for them. I'm currently not intending to uphold this complaint.

I invited Miss E and HSBC to give me any more evidence and information they wanted me to consider before issuing my final decision. HSBC didn't have anything further to add. Miss E responded but didn't have any new information to add. Miss E continued to deny any knowledge of the additional phone connected to her account.

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, and as neither party had anything further to add that would change my provisional decision, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss E to accept or reject my decision before 10 October 2023.

David Perry
Ombudsman