

## The complaint

G a sole trader complains HSBC UK Bank Plc refused to refund multiple transactions on G's account which weren't authorised.

G is represented by Ms P.

## What happened

The facts of the complaint are well known to both parties, so I will only provide a summary of the key points. Although this is a business account and Ms P has a representative, I will refer to Ms P throughout the complaint as she was a sole trader, and she had the relevant authority and responsibility over the account.

Ms P held an account with HSBC which she used for business G. HSBC contacted Ms P in late 2020 to highlight transactions with Google Play. Ms P says this is what prompted her to review the account activity. Ms P noted multiple transactions on G's account which she didn't recognise. The debit card transactions span a period of approximately one year and Ms P reported over 300 transactions which she didn't recognise totalling over £17,000.

Card Number	Date of Issue	Date of cancellation	Reason
*0842	Pre-fraud	29 August 2020	Reported lost
*4332	29 August 2020	25 September 2020	Fraud reported
*7029	25 September 2020	24 October 2020	Reported lost
*4100	24 October 2020	29 July 2021	Reported stolen

HSBC's records show Ms P had the same PIN for her debit card since January 2015 and no changes were requested. Ms P says she never gave the debit card to anyone or disclosed her PIN to a third party. Ms P also explained 13 direct debits had been set up without her knowledge but has since accepted that these were included in her initial fraud report in error. Ms P also said multiple cheques were issued without her consent.

Ms P believes the activity was carried out by a sophisticated fraud ring. During the time the transactions occurred Ms P says an individual who I will refer to as A lived in her home and had gained her trust. During this time Ms P treated A like family and she had access to her entire home. Ms P says A was part of this sophisticated fraud operation.

Ms P reported the fraud on her account and her belief that A was responsible to the police. Ms P says she had informed her that it was investigating a widespread issue with fraud and HSBC. Ms P had phone calls and email exchanges with the police, but it later transpired that Ms P had actually been talking to fraudsters who were impersonating the police. Ms P was eventually able to report the issues to Action Fraud and the police, but no further action was taken.

HSBC reviewed Ms P's fraud claim and, in its letter, dated 15 February 2022 it explained why it would not be supporting her claim for reimbursement. In summary it explained that as the debit card transactions took place over four cards it was unable to understand how Ms

P's card details kept becoming compromised. HSBC also said it didn't understand why the matter was not reported sooner as Ms P had been in touch with HSBC about Business G's account and activity on it. It also said the direct debits had been set up since January 2019 and Ms P can contact the retailers if she has any concerns with them.

Ms P remained unhappy with the review of Business G's account and referred her complaint to this service. An Investigator gathered information and in summary made the following findings:

- The cheques Ms P has disputed appear to have been signed by her given the signature on them.
- Whoever carried out the debit card transactions was able to take and return the card multiple times without Ms P noticing.
- The transactions are small and not in keeping with what we generally see with third party unauthorised transactions.
- Ms P didn't report the transactions for some time.
- The inconsistencies in Ms P's testimony make it difficult to establish the facts clearly.
- The regular use of the card by a third party suggests Ms P either took little care of her card or permitted the third party to use it.
- Ms P says she was targeted by an organised fraud group, but the evidence provided doesn't explain how the activity took place.

Dissatisfied with the Investigator's review, Ms P asked for the complaint to be reviewed by an ombudsman.

### **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.

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 good industry practice at the relevant time.

Ms P is represented in this complaint, and I can see detailed submissions have been provided about the complaint and circumstances. I'm also aware that I've summarised this complaint briefly. No discourtesy is intended by this. Instead, I've focussed on what I think is the heart of the matter here and the issues Ms P has reiterated her concerns about. If there's something I've not mentioned, it isn't because I've ignored it. This simply reflects the informal nature of our service.

Firstly, I am sorry to see Ms P has had cause for complaint. I don't underestimate the worry and anguish this situation has caused, and also the stress of dealing with the complaint about it. Having looked at the complaint fully, my review of the evidence has led me to the same overall conclusions as the Investigator previously set out and for much the same reasons. I will explain why.

I can see Ms P feels very strongly about the complaint. That's clear from what she's said to both us and the bank. But from what's been said and provided so far, there's not much common ground about exactly what happened or how it might have happened. Where the evidence is incomplete, inconclusive or contradictory (as it is here), I reach my findings on balance – in other words, what I consider is more likely than not to have happened in the light of the available evidence and the wider circumstances.

Under the relevant rules – the Payment Services Regulations 2017, Ms P is responsible for transactions she has authorised – either by doing them herself or giving permission for someone else to do them for her. The PSRs 2017 also set out that where a payment isn't authorised by the account holder, they may still be responsible for it if they've not been careful to follow the terms of their account or keep their personalised security details safe.

Essentially this means a customer should only be responsible for transactions they've authorised. Ms P says she didn't make any of the transactions in dispute. But HSBC can still hold Ms P liable for them if the evidence suggests it's more likely than not that she did make them, or if she authorised someone else to make them, or if she failed to keep her account safe – either by displaying a very high degree of carelessness or by intentionally failing to keep her card and PIN safe.

The transactions Ms P has disputed include cash machine withdrawals, retail spending in stores and online purchases. HSBC says the genuine card and PIN were used and the relevant verification procedures were followed. So, I'm satisfied the transactions were made with the genuine account information. But the regulations relevant to this case say this is not, on its own, enough to say HSBC can hold Ms P responsible for the payments she disputes.

A payment out of someone's account can only be treated as authorised if the payer has consented to it. I've also gone on to think about the circumstances around the transactions and whether Ms P gave her consent to the payments being made.

One of the difficulties in this case is the alleged fraud took place over a long period of time. Ms P has changed her account of the key events, which are significant details that go to the very heart of this complaint. So, I've got to consider what I think is likely to have happened here, and how Ms P was involved.

Ms P has said that as the transactions took place some time ago it's been difficult to establish which transactions she made and which she doesn't recognise. Because of this she hasn't been able to specify clearly and consistently which transactions she thinks were made by a third party and which she made. For example, G's business was related to animal care, and some of the transactions she initially claimed as fraud were linked to this industry. Ms P also claimed direct debits were fraudulent, despite them being long standing. I appreciate it can be difficult to carefully recall all account activity. But I highlight these issues so Ms P can appreciate that when making a decision this persistent lack of accuracy and plausibility makes it very difficult for me to place much weight on what she's said.

I understand Ms P says she believes the transactions were carried out by A who lived with her and would've had access to her card. However, Ms P says she never disclosed her PIN to anyone or wrote it down. This means A would've had to find out Ms P's PIN number and then take and replace the debit card on multiple occasions without Ms P's knowledge. Ms P says that A had been to shops with her, and she may have seen Ms P enter the PIN.

I've considered the transactions themselves and they appear to be general everyday purchases, and they are in keeping with other spending on the account. In addition, the transactions Ms P has claimed are fraudulent are spread over many months and debit cards. Ms P says HSBC told her to highlight all transactions she thought may have been fraud. But even with this in mind, I think there would be some consistency in the details provided by Ms P. Ms P also says timestamps from HSBC would help as they would show the transaction timings are out of character for Ms P, for example some may have occurred when Ms P was asleep. The key issue here though is whether Ms P gave her authority and consent for the card and PIN to be used, and ultimately the timings of transactions wouldn't conclusively show Ms P didn't authorise the transactions.

I also have to keep in mind these factors don't match what is typically seen in cases of unauthorised use. Usually if a third party somehow obtains access to an account, they spend the available amount quickly to maximise their gain before the activity is identified by the account holder. The transactions in Ms P's case vary in value and appear to take place at very different times of day. This poses a greater risk to those carrying out the transactions and it seems implausible that a third party would've taken these risks to carry out the transactions in this manner if the account holder hadn't provided access.

Another consideration is the fact the transactions took place over four different cards. In the space of one year Ms P's card was replaced three times. Ms P's comments around this have been unclear – she's claimed not to have received cards, but they all appear to have been cancelled and issued to her home address and then used for spending she hasn't disputed. Given Ms P appears to have used this account for everyday expenses, I think access to the debit card would've been very important to Ms P.

Further, each time the card was cancelled I think it would've been reasonable for Ms P to check her account and ensure there weren't any unusual transactions. However, the disputed transactions weren't highlighted at these points. The Investigator highlighted multiple instances where the activity before and after a card was reported as lost or stolen didn't support fraudulent behaviour. I won't repeat them all here, but I will underline the significance of Ms P's actions when the debit card which was reported as stolen in July 2021. I think it would be reasonable to assume this event would prompt a reflection of the account activity to ensure it was safe. I also think the fact three cards were issued in the space of one year should've been of concern to Ms P, prompting her to ensure she could review paper statements or log in online.

A key part of Ms P's complaint was that she wasn't receiving paper statements, which meant she was unable to pick up on transactions which she didn't recognise. Ms P doesn't appear to have raised this as an issue with HSBC at the time, and it has confirmed it wasn't aware with any issues with the receipt of statements to Ms P's registered address. Ms P had registered the account for internet banking. However, HSBC's records show the account wasn't accessed online between July 2020 and January 2021. This is also the time Ms P says she wasn't receiving paper statements. Ms P says it's likely A was intercepting the statements as she lived at her address. This may have been the case, but it doesn't explain why Ms P who was unable to see the financial situation for G – her sole business for a significant period, didn't take further action at this point. Although I appreciate Ms P's comments that she isn't confident with technology, I think it would've been crucial for her to have access to G's account to ensure the balance was healthy and the business was functioning as it should.

Ms P has also claimed cheques were issued from her account which she didn't issue. Upon reviewing these cheques, they appear to be issued in line with the mandate on G's account – in particular they appear to be signed by Ms P. I understand Ms P says this could still be fraud. But given the information on the cheques and their value, I think HSBC acted reasonably in acting on the payment authority given under the terms of the account. I can see one cheque wasn't processed as it wasn't signed in accordance with the mandate. This demonstrates HSBC was verifying the cheques before processing payments. Further, the cheques appear to be issued to third party businesses. The benefit to a fraudster of this type of transaction is limited, as the funds are paid to the recipient on the cheque, rather than allowing the fraudster to benefit directly, as they would with purchases or online transfers.

As well as looking at specific activity on the account I've thought about the general activity on the account and the broader circumstances of Ms P and her business. Although this was a business account there are predominantly general spending transactions for everyday expenses. I can see a loan was paid into the account for £18,000. Ms P says this was an

emergency bounce back loan and is unrelated to the complaint. However, I think this is a significant issue. In order for Ms P to assess her financial situation she would've had to have a firm grasp of the business account and its ability to recover from the pandemic. I think this would've meant analysing transactions and this could only have been done with a review of statements or online access to the account. Throughout Ms P's complaint there are multiple inconsistencies, but I find this particular point highly unusual, especially given the value of the loan. On balance, I find it unlikely Ms P had as little knowledge of the account activity as she is claiming.

I've reviewed the emails Ms P has provided with who appears to be a fraudster impersonating a police officer. I am sorry to see Ms P fell victim to this impersonation fraud, and she believed her issues with HSBC were being looked into as part of a wider police operation. It is this experience alongside Ms P's experience with A which make her believe that she has been the victim of a wider organised fraud operation. I appreciate Ms P's experience has been stressful and frightening. I can't say for certain if the fraudster Ms P was emailing and A were connected. In any event, the salient issue for me to determine if whether Ms P authorised the transactions she is disputing. And on balance, the evidence presented, it seems more likely than not that Ms P authorised the transactions

The support provided by HSBC has been questioned by Ms P and she says the fraudulent activity should've been picked up by HSBC. Upon reviewing the activity, I don't think it is so out of keeping with the general activity on the account for HSBC's internal fraud triggers to be alerted. The transactions claimed by Ms P are very similar to her own spending, and given they occur in the same area and are spread over many months I don't think there was anything unusual to alert HSBC to them. Further, Ms P says she doesn't withdraw cash, but some of the fraudulent transactions were cash withdrawals. I can't see a change in account usage in this way, but even if there was a shift, I consider the changes to be fairly minimal given the transactions are of a fairly low value. As a result, I don't think it would be reasonable to expect HSBC to have taken any action at this point.

Once Ms P reported the fraud on the account HSBC asked her to go through her account and highlight transactions for it to review as unauthorised. Ms P says the service and support provided by HSBC after this point was poor and she wasn't given the appropriate level of guidance in relation to protecting her account. Ms P says some further questions would've revealed the extent of the fraud. I can see HSBC provided basic information about safeguarding the account. Ms P wasn't noted as being vulnerable and this was an account used for business purposes. Given the information HSBC had at the time I wouldn't have expected it to take any further steps, and it would be for Ms P to raise any concerns or issues she had.

I can see there were instances where Ms P was chasing the fraud team for a response. HSBC has said the waiting time for fraud reviews was significant. I appreciate the time taken to review her concerns added to Ms P's difficulties, but I can't see that HSBC caused any significant avoidable delays in its review. HSBC managed Ms P's expectations around the time it may take to look into her claims, and she was sign posted to Action Fraud and the police. This is the type of support I would expect HSBC to provide, and I'm not persuaded that it failed to appropriately assist Ms P.

Overall, having considered everything, all of the available evidence points to it being more likely than not that Ms P provided authority for the transactions. I realise that this is not the outcome Ms P was hoping for, and she will be disappointed by the decision I've reached. As such, I cannot fairly and reasonably require HSBC take any further action in relation to this matter.

**My final decision**

For the reasons explained above, my final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask G to accept or reject my decision before 7 February 2025.

Chandni Green  
**Ombudsman**