

The complaint

Mr M complains that HSBC UK Bank Plc are pursuing him for a loan that was taken out after his phone was stolen on a night out.

What happened

In June 2022 Mr M travelled to the UK to visit family and friends. On 25 June 2022, his phone was stolen during a night out and a loan totalling £13,920 was taken out via his HSBC app. Mr M says he didn't take out the loan and that he didn't make two transactions on his account after the loan funds were transferred in totalling £9,025. Mr M also had disputed transactions on another UK bank account he held and an HSBC account he held overseas.

Mr M reported the theft to the police and spoke to HSBC to report the loan and transactions as fraudulent. When calling for an update on the fraud claim Mr M spoke to various HSBC staff and was told that a decision by the fraud team had been sent by letter to his address abroad and was available to see via his online account. Mr M was unable to access a copy of the letter on his online banking because his account had been frozen and locked. After becoming frustrated with HSBC's handling of the matter he made a complaint. HSBC considered the complaint and sent a final response to Mr M in October 2022 which said that it had rejected his fraud claim because it couldn't confirm how a third party was able to access his device and by-pass its security measures (such as the passcodes) without Mr M's knowledge.

Unhappy with HSBC's response, Mr M brought his complaint to this service. Our investigator didn't think the complaint should be upheld. She said the pattern of spending didn't look to be that of a thief because the account was left with some funds after the disputed transactions. And that she couldn't agree that there was a point of compromise which explained how a third party could've accessed Mr M's HSBC app, taken out the loan and then sent the money to his other UK account.

Mr M disagreed with the investigator and asked for an Ombudsman's review. He said money was moved to his other UK account and spent very quickly. And the reason more money wasn't lost was because of the block he placed on that account. Mr M added that he was on a night out when his phone was stolen and it was possible that the thief was able to see the pin he used to access his phone and pay for drinks before then stealing his phone. He confirmed that the PIN number he uses for his phone was the same he used to access his HSBC app and the other account he held in the UK.

I considered the complaint and told both parties I was minded to reach a different conclusion to the investigator. I said I was minded to uphold the complaint and ask HSBC to write off the loan that had been taken out – most likely – fraudulently. And that HSBC should pay Mr M £400 for the way it handled the matter.

HSBC agreed with my recommendations. But Mr M disagreed in relation to the compensation that had been offered. He said that he had been refunded the disputed transactions on his HSBC account abroad and offered more compensation much faster. And that after speaking to solicitors and representatives of his HSBC account abroad, HSBC UK

should have in-fact come to the same conclusion/verdict within similar timeframes given both were provided with the same evidence/records. He says that the lack of support and assistance with this investigation is evidence of severe negligence from a global financial institution. So, Mr M felt he should be paid £6,500 compensation by HSBC. He said this figure will erase his arrears and also provide him with the funding needed for professional counselling and PTSD therapy.

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 going to uphold this complaint. I'll explain why below.

I've read and considered the whole file. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as it is here), I have to make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

Having considered the facts before me, I'm not persuaded there's enough evidence to demonstrate that it was Mr M who authorised the additional lending nor the disputed transactions, and I'm satisfied there is a plausible explanation for how they came to be made by an unauthorised third party.

Here the payments from Mr M's account to his own account and an unknown third party were funded by the thief requesting additional lending via the HSBC app. And because a loan was already in place it was relatively easy for the thief to request an advance of more money (£13,920) via the app at 02:08am on 25 June 2022. Transfers of £10 and £8,000 were then made. Further transfers were made but stopped by HSBC before a £1,000 international payment was also made.

The disputed transactions complained about here took place in June 2022, so of particular relevance to my decision are the Payment Services Regulations 2017 (PSRs) – which apply to transactions like the ones made from Mr M's account.

The PSRs say that a payment transaction is authorised by the payer where they have given their consent to the execution to the payment transaction. Such consent must be given in the form and in accordance with the procedure agreed between the payer and the payment service provider.

Unless the payment service provider can show consent has been given, it has no authority to make a payment or debit the customer's account. Where a payment service user denies having authorised a payment transaction, it is for the payment service provider to prove that the transactions in question were authorised by the customer.

After considering Mr M's testimony and the various payments that were made from Mr M's account, I'm minded to ask HSBC to write off the loan that was taken out here. I'm not satisfied it was Mr M that took out the loan so I don't think HSBC can fairly hold him liable under the terms and conditions here. And I'm not satisfied that Mr M made the following

transactions from his HSBC account. As a result, I don't think he benefitted from the funds willingly.

Mr M has said he reported his phone stolen on 26 June 2022. And has provided the same set of circumstances to his other banks where he has disputed payments. So, I'm satisfied that his phone was likely stolen from him. Mr M thinks that whoever stole his phone was able to access his device with his passcode, which he thinks the thief may have seen him type into his phone to access it and/or when he went to pay for some drinks in a bar that same night. Mr M has said that his password for his phone and banking apps was the same – which would explain how the thief was able to gain access to his HSBC banking app and the other accounts.

I do consider it unwise of Mr M to have chosen the same password, but I don't consider this reaches the standard of gross negligence required to show that he was at fault. He has said he hasn't shared his password with any third parties and didn't write it down in a place that would be easily accessible. There is a limit in my view of how many passcodes people are expected to remember for all the devices and apps that are now required. So, I don't necessarily consider Mr M here has wilfully disregarded any obvious risk.

As I've outlined above, it is for the payment service provider to provide evidence proving how a transaction was authorised. In this instance, I'm not persuaded HSBC has been able to persuade me that it was more likely than not to have been Mr M who authorised the payments just because there was no obvious point of compromise such as Mr M sharing his details via a phishing scam or passing his details to a third party willingly. Mr M has also provided a consistent and plausible explanation for how the payments were made without him being involved.

The payment services directive itself (which the PSRs 2017 implement) states that *"in the absence of...consent, a payment transaction shall be considered to be unauthorised"*. For the reasons I've given above, I don't consider that Mr M provided his consent for these payments to be made from his account, I'm satisfied they are therefore to be considered as 'unauthorised' for the purposes of the PSRs 2017. This means that HSBC is liable to refund the payments, unless it can show that Mr M acted with intent or gross negligence with regards to keeping his security credentials safe.

HSBC has said that the method of logging into the phone and banking app was via PIN, which supports Mr M's testimony about how the thief gained entry to his account. So, I think the fairest thing to do is to write off the loan and remove it from Mr M's credit file. It was the loan that funded the disputed transactions, so the writing off of the loan, which I'm satisfied Mr M didn't agree to, will fairly resolve this complaint.

I note that HSBC has raised concerns about the money that was spent from Mr M's other bank account. Firstly, I can see that Mr M did dispute the payments made on his other account but it declined his claim on the grounds the transactions were funded by a loan that Mr M says he didn't take out, so there's no risk of Mr M being compensated twice. Secondly, Mr M has not brought a complaint about his other bank to this service. It is not party to this complaint, so I cannot make any finding about its potential liability and whether this should be shared or only be against the other bank account provider.

Whilst the dispute resolution rules (DISP) give me the power (but do not compel me) to require a financial business to pay a proportion of an award in circumstances where a consumer has made complaints against two financial businesses about connected circumstances, Mr M has not referred a complaint about his other bank, and DISP does not empower me to instruct Mr M to make or refer a complaint to me about another business.

I am required to consider the complaint in front of me. I have found that HSBC has not acted fairly and reasonably in the circumstances of this case. And whilst it is a possibility that Mr M may have cause to complain against the other account provider, I am not persuaded it would be fair to reduce the award solely for that reason. Mr M is entitled to choose to complain only about HSBC, and I am satisfied that it ought to have written off the loan and subsequent disputed transactions.

Compensation

I've thought very carefully about this issue and the compensation on offer. After listening to the calls HSBC provided, I'm satisfied that Mr M was left frustrated when trying to speak to the fraud team and someone about the decision that was made. He mentions being transferred to the wrong department, being left on hold and waiting to speak to someone for long periods of time. He was also understandably left frustrated that HSBC's fraud decision was sent via post to his address abroad (Mr M says this wasn't received until early October 2022). I note a letter was also sent to an address in the UK in June 2022, that he wouldn't have received, explaining how his access had been suspended. Mr M was also locked out of his online account and couldn't access any e-mails or notifications for updates about the fraud decision with him being told only the fraud team could remove the freeze on his online banking. This meant he was also unable to access any of the funds in the account.

I understand that he fell behind on various payments such as rent and relied on assistance from close friends due to not having money when he returned to his home abroad. I understand that from his position if HSBC had quickly reimbursed the transactions or overturned its decision not to hold him liable this would've reduced the debilitating effect this matter had on him. But I need to make sure I separate the role of the fraudster and the role of HSBC when considering what happened to Mr M and his mental health.

It's clear from Mr M that he feels HSBC's decision itself has also aggravated matters further. And that his HSBC bank abroad found in his favour extremely quickly and paid compensation. But I do also have to bear in mind that jurisdictions differ and that can sway decisions in relation to refunds and compensation. I can understand why Mr M was left confused by the difference in this perceived treatment but just because another HSBC account issuer overseas accepted the transactions on a different account to be fraudulent in a different timeframe and then offered a compensatory figure, that doesn't automatically mean the same should be said for HSBC in the UK.

Mr M has requested compensation of around £6,500. However, I'm not minded to award such a significant amount here. Mainly because I can understand why this was a finely balanced complaint. And even if HSBC had communicated its decision to not hold Mr M liable more clearly, which I think it should have, then I'm not satisfied this would've had a different outcome in relation to his personal health.

Putting things right

So, HSBC should write off the loan and any record of it from Mr M's credit file. I think HSBC should make an award of £400 for the distress and inconvenience it's handling of this matter has caused. I think the way HSBC communicated with Mr M considering he was overseas, the time he spent on hold and the number of calls he made asking for updates and for help with accessing his account only added to his distress and inconvenience here.

Any access to the account and the remaining funds must also be granted back to Mr M.

My final decision

For the reasons given above, I uphold this complaint and direct HSBC UK Bank Plc to:

- Write off the full loan and any record of it from Mr M's credit file.
- Pay Mr M £400 for the distress and inconvenience it's handling of this issue caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 31 May 2024.

Mark Dobson
Ombudsman