

The complaint

Mr G complained because HSBC UK Bank Plc refused to refund him for transactions he said he didn't authorise.

What happened

On 9 December 2023, Mr G was on holiday abroad. That day, four transactions debited Mr G's HSBCC account. They took place over a few hours between 4 am and 7.30 am, and were all to a bar / nightclub in the location where Mr G was staying. The total including non-sterling transaction charges came to £2,118.50.

On 12 December, Mr G contacted HSBC and said he hadn't authorised the four transactions. He told HSBC that he still had his card safe in his wallet, and it hadn't been out of his sight for any length of time. He said no-one else had access to his card and card details, or to the phone on which he had his digital wallet. He also said the card was registered to his own digital wallet, but it wasn't registered to any friends' or family's digital wallets. His phone wasn't lost or stolen, and it was secured by PIN, password or biometric, and he didn't share his phone or security details with anyone.

HSBC put a block on Mr G's card and replaced it. Its fraud team investigated.

The fraud team asked Mr G for more information, and told him that the transactions had been made using his phone. Mr G said that his phone, and his digital wallet, were both password protected. He'd only noticed the transactions as he was about to go home, so he hadn't reported the problem to the hotel or police at the resort.

The fraud investigator pointed out that there were large gaps between the four transactions. He said that normally a fraudster would take as much money as possible very quickly, before it was declined. He told Mr G that all the transactions had been made with the Mr G's registered phone, on which he'd made undisputed transactions too. And the device token code was unique, which indicated that someone would have had to have got Mr G's phone, known the passcode, used it, put it back, then done it again at intervals four times. The investigator said his role was to look at where liability was. And as the transactions had happened on Mr G's phone, which was protected with a passcode, which he hadn't shared, and he still had the phone after the transactions had taken place, he couldn't offer Mr G a refund. He explained that the card hadn't been cloned as Mr G had suggested – it was Mr G's phone which had been used to make the transactions.

Mr G asked why HSBC hadn't phoned him to query the transactions before they went through. He said HSBC was blaming him for something he hadn't done.

In HSBC's final response to Mr G's complaint, it said that:

- the disputed transactions have been made through Mr G's mobile payment and digital wallet, using Mr G's debit card;
- a fraudster would have used a compromised card quickly, starting with a high value transaction to maximise the money obtained. The transactions on Mr G's account were relatively low, and the gap between transactions wasn't consistent with this;

- Mr G's phone ID, which he'd used for undisputed transactions, matched the disputed transactions. HSBC explained that a device ID is a system-supplied device identification string that uniquely identifies an appliance in a system.
- Mr G had asked why HSBC hadn't highlighted the transactions. HSBC said that its fraud detection systems took multiple factors into account. The disputed transactions hadn't been deemed suspicious by the fraud detections systems and didn't match what HSBC was seeing as fraud trends. And HSBC said it saw a lot of genuine customer usage that matched the transactions on Mr G's account.
- HSBC said it wasn't its duty to identify who carried out the disputed transactions, only where liability lay. Mr G was solely responsible for safeguarding his card and phone. And he'd confirmed he had the phone before, between and following the disputed transactions, so HSBC couldn't offer Mr G any refund.

Mr G wasn't satisfied and contacted this service. He said he believed his phone had been cloned, as he'd made other genuine payments around the same time.

After Mr G contacted this service, HSBC offered £100 compensation for its delay in responding to Mr G. Mr G didn't accept this. He told the investigator that the delay issue was because he'd waited over two months for the fraud department, after trying to speak by phone many times. He said that he'd spoken to someone on 22 January who had compensated him for waiting times, so HSBC didn't need to send him any more funds. He just wanted his money back from what was stolen abroad, of which he had no recognition.

Our investigator didn't uphold Mr G's complaint. He said that the four disputed payments had been made using the mobile payment and digital wallet on Mr G's phone. Mr G had confirmed the phone hadn't been out of his possession. So there was no evidence to show any point of compromise. The investigator also said he didn't agree with Mr G that HSBC should have stopped the payments. That might happen when a payment was significantly unusual or uncharacteristic, but there had been genuine transactions in the same area, and the amounts weren't enough to raise concern. The investigator also thought that HSBC's offer of £100 compensation for delays in responding was fair.

Mr G didn't accept the investigator's view. He said he was being punished for something he hadn't done. He said he'd been with HSBC for a number of years and there hadn't been fraud on his account. He said HSBC should have phoned him to cancel or to approve the transactions. And he said his card had been cloned but he didn't know how because he'd been staying in an all-inclusive resort. He said HSBC had let him down.

Mr G asked for an ombudsman's decision.

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.

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed "*gross negligence*." So what determines the outcome here is whether it's more likely than not that Mr G, or a third party fraudster unknown to him, authorised the disputed transactions.

I've looked at the computer evidence about the transactions. I've seen that the disputed transactions were carried out with the same token as previous undisputed transactions on Mr G's account. The token was linked to Mr G's registered phone, which was used to make the transactions.

If anyone other than Mr G had authorised the transactions, they'd have had to obtain Mr G's phone without his knowledge, and known how to get into his secured phone. They'd then also have had to have known how to access his secured digital wallet. As Mr G still had his phone, and said no-one else knew his security details, I can't see how anyone else could have carried out the disputed transactions. I also don't think it's likely that any third party fraudster would have carried out four transactions at intervals, having stolen Mr G's phone without him noticing, and then returning it also without Mr G noticing.

Mr G told our investigator that he believed his phone had been cloned, and that was how the disputed transactions took place. But I consider that's unlikely. When Mr G answered HSBC's questions about the circumstances when he was on holiday, there were no clear opportunities for his phone, digital wallet, or security details to have been compromised.

And if his phone had been cloned, I think it's highly likely that Mr G would have had other problems, not just the four HSBC disputed transactions. Mr G also hasn't told us of any action that he took to check, or get telecoms help with, his phone, to put a stop to any further problems. I think he would have done if he'd believed his phone had been compromised. Instead, he carried on as normal with subsequent undisputed transactions using the same phone.

I've also looked at the pattern of the transactions. A fraudster would typically take out as much as possible, starting with a very high amount, as quickly as possible in order to maximise their gain before the customer could find out and put a stop to transactions. Here, the four disputed transactions are spaced out over several hours. They were also not for huge amounts for the location and the bar/nightclub type of venue. Mr G himself pointed out that he'd had much more in his account at the time. The transactions also didn't continue after that night. This isn't typical of the actions of a third party fraudster.

Mr G said HSBC shouldn't have paid the transactions, but should have contacted him to ask whether they were genuinely his. Banks don't have to disclose the full details of how their security systems work, as this could jeopardise security. But I accept what HSBC told Mr G, which was that they see a lot of genuine customer usage in these areas, and the transactions didn't match what HSBC was seeing as fraud spend at the time. Banks do have responsibilities to pay transactions in line with customer instructions, balancing this with security considerations. I don't consider that HSBC had to contact Mr G about these transactions, which had been carried out using Mr G's registered phone and digital wallet which had been used for previous genuine transactions.

So for all these reasons I don't consider it's likely that a third party fraudster carried out the disputed transactions. This means that HSBC doesn't have to refund him.

Finally, HSBC offered Mr G £100 for the delay in responding to him. I note that Mr G replied to this offer saying that he'd already been compensated for waiting times and HSBC didn't need to send more funds for that, only that he wanted the money refunded for the disputed transactions. I haven't upheld his complaint for a refund for the disputed transactions, but I leave it to Mr G to contact HSBC if he wishes, about its £100 compensation offer.

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 Mr G to accept or reject my decision before 25 June 2024.

Belinda Knight
Ombudsman