

The complaint

Mr S, who complains on behalf of Mr F, is unhappy that HSBC UK Bank Plc has declined to refund transactions that he says were made by an unauthorised individual.

What happened

In 2004, Mr F moved overseas to live with his girlfriend. Mr S, a friend of Mr F, says that over time, he became concerned with Mr F's health and his girlfriend's intentions with his finances. He believes Mr F has been taken advantage of financially, not only by his girlfriend, but by his former landlord too.

Mr S says that Mr F was vulnerable and due to his health, would've been unaware that his card was being used without his permission. And this was particularly so in 2021 – 2022. Mr S says that HSBC has failed in its duty of care to protect Mr F's account from the risk of financial harm, and after being appointed official representative for Mr F's financial affairs, raised a complaint with the bank. He believes HSBC should refund a number of Automated Teller Machine (ATM) withdrawals to Mr F on the basis that they were unauthorised.

HSBC didn't believe it had done anything wrong and declined to refund the disputed transactions. Within its response to Mr S' complaint, it said:

- From checking Mr F's account back to 2014, there were regular ATM withdrawals in the country where Mr F lived.
- Over a ten-year period, Mr F made contact with the bank to discuss his account, and he never mentioned transactions being made without his authority.
- ATM transactions require the use of a Personal Identification Number (PIN), which an account holder is advised not to share with anyone.
- A transaction will only flag as suspicious with its fraud team if it breaches one of their parameters.
- When Mr S notified it of Mr F's health and mental wellbeing in March 2022, it placed a block on Mr F's account to prevent any further ATM withdrawals.
- It couldn't locate any errors on HSBC's part.

Mr S remained unhappy and referred a complaint to this service where it was considered by one of our investigators. She didn't believe that HSBC was responsible for Mr F's loss. She felt that Mr F had given 'apparent authority' to his girlfriend at the time, by providing her with his card and PIN. So, she said that HSBC was entitled to treat any transactions the girlfriend made as authorised by Mr F. She also didn't feel the transactions were so suspicious that HSBC ought to have contacted Mr F to discuss the account activity, or that HSBC should've been aware that he was vulnerable and at risk of financial harm.

Mr S didn't agree and asked for an ombudsman's decision. So the complaint has been

passed to me.

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 agree with the conclusions reached by our investigator for reasons I set out below.

I appreciate how strongly Mr S feels about this complaint. He's provided us with a lot of information and has raised many points he'd like me to consider. Although I may not mention every point raised, I have considered everything but limited my findings to the areas which impact the outcome of the case. No discourtesy is intended by this, it just reflects the informal nature of our service.

The relevant regulations here are the Payment Services Regulations 2017 (PSRs). 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. So, the issue for me to determine is whether it was more likely than not that Mr F carried out the transactions himself, or whether he authorised someone else to carry out the transactions for him, which would be considered as authorising the payments himself.

Firstly, I'd like to recognise the difficulties surrounding this complaint. Mr S is clear in his belief that Mr F didn't give permission for the disputed ATM withdrawals to be made. But I also recognise that sadly, Mr F himself isn't in a position to give his version of events of what happened over a number of years. Ultimately, when reaching this decision, I've had to focus on whether or not HSBC should be responsible for the transactions, based on the balance of probabilities and what I consider to be fair and reasonable in the circumstances.

I'm in receipt of Mr F's account statements going back almost 20 years. I've considered the account activity in detail, along with what I know about the contact Mr F had with the bank over the years. I recognise that Mr S has said Mr F's living expenses in the country he was in would've been modest. He's estimated that his monthly costs would've been around £350. The statements don't show payments for bills, such as for rent or utilities, but rather ATM withdrawals that feature throughout the duration. So, it seems most likely that Mr F would've paid for these using cash that he'd withdrawn himself.

I think that's important here. Because Mr S has said he's convinced that HSBC failed in its duty of care to Mr F. He's suggested that the large amount of ATM withdrawals from Mr F's account, particularly in 2021 and 2022 should've been a cause for concern for the bank and prompted it to intervene.

However, I consider that Mr F himself would've been withdrawing money from ATMs over the years. And I can see that Mr F had made contact with HSBC on occasion, usually via email, to discuss his account. I consider the most relevant contact to be in September and October 2018, where Mr F told the bank that his partner had left him and had knowledge of his card details. He asked the bank to change his card details and it responded to say it wasn't able to do this via email, but provided him with the relevant telephone number to call. And, the following month, he sent another email to explain that his former girlfriend had stolen £25,000 from his account and asked for it to be closed (he didn't mention any problem with ATM withdrawals). Again, the bank emailed him back, and told him to urgently call the appropriate telephone number.

But, there isn't any evidence that Mr F did call as advised. I've seen evidence that this

£25,000 was sent to another account held at an overseas bank, and there appears to have been some verification from Mr F before the transfer was processed. As well as this, HSBC sent a letter to Mr F's overseas address to confirm the transfer, but he didn't raise any further issues with the payment, or enter into any further discussions about fraud. From this, whilst I find that the bank could've been more proactive in speaking with Mr F about his emails and his allegation of fraud, I find it likely that Mr F accepted the circumstances of the transfer and didn't want to pursue it any further.

This contact is also important because HSBC gave Mr F the details to tell it about any issue with his account, but he didn't do so. Mr S has said that the ATM withdrawals in 2021 and 2022 should've prompted the bank to intervene. But, they continued to be ATM withdrawals in the same country Mr F was living in, and he hadn't raised any concerns about such withdrawals before. I accept that in 2021 and 2022 the frequency of the withdrawals increased, but I don't find that the increase is so significant that would've given HSBC reason to believe that Mr F was at risk of financial harm or prompted it to intervene.

I've thought very carefully about what Mr S has said about Mr F's health and relationships. He's explained that Mr F's health deteriorated during and after the Covid-19 pandemic. To the point where Mr S was being contacted regularly by Mr F's landlord to express concern about him, and also to explain how he would often injure himself as a result of regular alcohol consumption. HSBC wasn't aware of the concern with Mr F's health, or that he was becoming increasingly vulnerable. Mr S said he tried to reach out to Mr F by telephone, to try and convince him to return to the UK. Mr S was aware that Mr F's former girlfriend had possession of his debit card and knew his PIN. Mr S tried to warn him of possible theft but says Mr F dismissed his concerns and didn't seem to care.

Although HSBC has mentioned the safeguarding of PINs, and how it advises customers not to share with anyone, the PSRs do allow for someone to initiate payments on behalf of the consumer, in the form of an 'agency relationship.' Agency can be created formally or informally by asking or permitting a third party to undertake a task on your behalf.

If a consumer has permitted a third party to appear as if they have the consumer's authority to make payment transactions, those payment transactions will likely be authorised even where the consumer didn't ask the third party make any payments or know about them. I'm satisfied that by allowing his former girlfriend possession of his debit card and having knowledge of his PIN, (as well as the former landlord too), this created an informal agency relationship where any withdrawals they made using Mr F's card and PIN can be considered as authorised by Mr F. As such, HSBC isn't responsible for any refund of transactions made under such agency relationship.

And although I don't consider that the disputed transactions should've given HSBC cause for concern, for the reasons I've already explained, I'm aware that Mr S himself tried to warn Mr F about the risk of theft and he dismissed such concerns. So even if HSBC had spoken with Mr F at the time, I don't find that such conversation would've resulted in a different outcome.

When I consider everything that has happened here, it's possible that Mr F has been financially manipulated in some way by his former girlfriend and/or his former landlord. But ultimately, we will never know the full details, because Mr F himself is not in a position to give his own version of events. Having said that, I don't find that any significant failing from HSBC has resulted in Mr F's loss. On balance, I find that Mr F gave authorisation for his card to be used in the way that it was, and I don't consider that any intervention from HSBC would've resulted in a different outcome.

As such, whilst I recognise that this will be very disappointing to Mr S, it wouldn't be fair for me to ask HSBC to refund any amount to Mr F.

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 F to accept or reject my decision before 1 April 2025.

Lorna Wall
Ombudsman