

## **The complaint**

Mr B has complained HSBC UK Bank plc won't refund him for transactions made on his account which he didn't authorise.

## **What happened**

On 14 December 2023 Mr B contacted HSBC to report numerous gambling transactions which he'd not made. He'd recently come back home after being seriously ill whilst he was working abroad. Mr B had been abroad since October 2021 on a work contract spending regular two-week periods back home in the UK where he'd lived with his partner.

HSBC believed it was most likely that Mr B had given someone else authority to use his account which meant that he was in breach of his terms and conditions. They wouldn't refund him but also believed Mr B had only complained about transaction between 29 August and 9 November 2023.

Mr B remained unhappy and brought his complaint to the ombudsman service. He clarified his complaint was about gambling transactions between 2019 and 2023 which amounted to over £150,000. He knew he'd not made these himself but felt it was most likely his ex-partner using his account without his consent.

HSBC sent evidence in response to our request for their business file covering four years of transactions. This didn't include the detail we require when reviewing complaints of this nature. Our investigator initially upheld the complaint in the absence of the correct evidence. HSBC said they would accept this outcome and repay £3,543.19 to Mr B. This was for the transactions between August and November 2023. Mr B was confused as his complaint covered transactions back to 2019.

Our investigator, after discussion with HSBC, clarified that she would only be considering transactions that the Payment Services Regulations 2017 required. This legislation – along with HSBC's terms and conditions – meant that HSBC were not required to refund transactions that took place more than 13 months before Mr B had raised his complaint.

Mr B remained unhappy with the offer made by HSBC as he felt there were over £65,000 of transactions within that 13-month period.

A new investigator reviewed the evidence. She believed evidence from the gambling companies showed Mr B held an account with them and overall, she believed he'd authorised these transactions.

Still unhappy, Mr B has asked an ombudsman to consider his complaint.

## **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've reached the same outcome as our investigator. I'll explain my

reasoning and where that differs slightly.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

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 to have been good industry practice at the relevant time.

The regulations which are relevant to Mr B's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. There are exceptions to this and that would include if the customer had acted with gross negligence or intent to allow any security details – including the card and PIN – to be used by someone else. I have also considered whether, under the PSRs, Mr B provided apparent authority to his ex-partner to use his account and make these transactions.

Firstly, I need to confirm that I won't be asking HSBC to review the transactions that were made more than 13 months before Mr B reported this fraud to them. This is the provision within the PSRs, and I note that HSBC also cover this in their customer account terms and conditions.

To help me come to a decision, I've reviewed the evidence HSBC provided as well as what Mr B has told us.

I believe these disputed transactions which took place between 12 December 2022 to 6 December 2023 were carried out with Mr B's authorisation. I say this because:

- It's important to note that Mr B is talking about having lost a massive amount of money, so I wonder how he was unaware of the state of his current account. HSBC provided us with 54 pages of transactions Mr B disputed. Mr B has told us he didn't receive any copies of printed statements whilst he was overseas, nor did he have access to HSBC's banking app. This suggests to me that he may well have handed the running of his current account over to his ex-partner and that implies consenting to her use of his account.
- I can see numerous transfers from Mr B's HSBC account with a specific statement narrative (*my love*) which suggests regular payments to his ex-partner. Mr B hasn't disputed these, so I believe it's more than likely he made these. This suggests at some level Mr B was using his account, so must have been aware that there were numerous gambling transactions. These would be hard to miss.
- Mr B was seriously ill late in 2023 before having to come back to the UK. It seems that around this time his relationship broke down. He then reasonably soon after raised his dispute with HSBC. I accept this may have been because he discovered the disputed transactions for the first time, but I also think it's likely that Mr B realised he'd allowed his partner to use his account and now saw this as misuse.
- HSBC shared with us evidence from one of the gambling companies. This shows their account-holder was Mr B and they held his correct email address. I know Mr B disputes this but this does suggest he could have made these transactions himself as any correspondence would be going to his email and making him aware of the volume of transactions.
- During the period of the gambling, there were regular credits made to the account by the gambling companies. I can see no pattern from reviewing Mr B's account statements (over 500 pages of them) to suggest that these credits were regularly

transferred elsewhere from his account which could have demonstrated someone else using his account.

I know Mr B will find this outcome distressing and I'm very conscious of what he's told us about his recent health, but I'm unable to ask HSBC to refund him as I believe there's enough evidence to show he made these transactions himself.

### **My final decision**

For the reasons given, my final decision is not to uphold Mr B's complaint against HSBC UK Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 11 December 2024.

Sandra Quinn  
**Ombudsman**