

## **The complaint**

Ms G is unhappy about HSBC UK Bank Plc (“HSBC”) refusing to refund transactions she says she did not make.

## **What happened**

The circumstances of this complaint are well known to all parties concerned, so I will not repeat them again here in detail. However, I will provide an overview of events.

In August 2024, Ms G says she was checking her HSBC statements and discovered several debit card payment transactions she did not make. She says these transactions were made using debit cards associated with her HSBC account, which occurred between November 2022 and July 2024. The total amount in dispute is £3,773.79. By and large, the payments were retail transactions.

Ms G contacted HSBC to raise a dispute. HSBC investigated the matter and refused to offer any redress. Consequently, Ms G raised a complaint about this which she referred to our service.

One of our investigators considered Ms G’s complaint about HSBC and did not uphold it. Ms G did not agree with the investigator’s findings. Therefore, this matter has been passed to me to make a final decision.

## **What I have 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 the investigator at first instance for the reasons I set out below.

### Regulatory framework

The regulations which apply to Ms G’s complaint are the Payment Services Regulations 2017 (the “PSRs”).

### Raising the complaint without undue delay

Regulation 74(1) of the PSRs states:

*“A payment service user [in this case, Ms G] is entitled to redress ... only if it notifies the payment service provider [in this case, HSBC] without undue delay, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed payment transaction.”*

Ms G is complaining about unauthorised payment transactions which occurred between November 2022 and July 2024. She first raised her concerns about these with HSBC in August 2024. This means under Regulation 74 of the PSRs, HSBC is entitled to only

consider redress for the disputed payment transactions which occurred from July 2023. HSBC alluded to this in its letter dated 15 August 2024.

In my judgment, it is fair and reasonable for HSBC not to consider redress for any of the disputed payment transactions prior to July 2023. I say this because I am persuaded that Ms G could have contacted HSBC sooner about the payment transactions. I have seen evidence that Ms G used her online banking platform frequently during the period concerned. Therefore, to my mind, it is reasonable to say that Ms G would have noticed the disputed payment transactions sooner than August 2024 – particularly given the fact the payment transactions would have lowered her overall balance.

Even if the 13-month rule did not apply here, I take the view that there are other concerns regarding the disputed payment transactions which I deal with below.

### Authorisation

Under the PSRs, HSBC is required to refund any unauthorised payment transactions made from Ms G's account. Ms G says she did not make the disputed payment transactions in this matter. So, I must decide, on the balance of probabilities, whether Ms G authorised the transactions or not.

The test for authorisation is twofold.

### *Authentication*

Under the PSRs, HSBC must prove the disputed payment transactions were authenticated. That is, HSBC needs to provide technical information which shows that the transactions were made using Ms G's genuine card and security credentials – for example, the card's chip being engaged, correct PIN code entered, and correct card details used, etc. Having considered the technical information HSBC has provided, I am satisfied the disputed payment transactions were authenticated.

### *Consent*

Turning now to the second part of authorisation, consent.

Below are three possible scenarios regarding consent:

- a) Ms G consented to the disputed payment transactions herself. That is, she used her card(s) to make the disputed payment transactions herself.
- b) Ms G provided authority to a third-party to consent to the disputed payment transactions. That is, Ms G provided authority to a third-party to use her card(s) to make the disputed payment transactions (although there is further qualification to this scenario).
- c) A third-party, without Ms G's authority, gave consent to the payment transactions. That is, a third-party used Ms G's card(s) to make the disputed payment transactions without her authority.

In scenarios (a) and (b), Ms G authorised the disputed payment transactions, so redress would not be available to her. In scenario (c), Ms G did not authorise the transactions, so redress could potentially be available.

Ms G denies making the transactions herself, and she has not said that she provided authority to a third-party to make them. Therefore, I have reflected on whether it is more

likely than not that scenario (c) applies, rather than (a) and/or (b). Having done so, I am not persuaded this is the case.

For a fraudster to have made some of the disputed payment transactions – they would have required Ms G's physical card(s) at the very least (and possibly her PIN code on some occasions). However, Ms G has not provided any explanation or evidence to support the proposition that her card(s) or PIN code were compromised. On the contrary, Ms G has confirmed that she kept her card(s) in her bag, which no one had access to. She added that she did not lose her card(s) at any point, nor did she write down her PIN code or share it with anyone. Based on Ms G's own testimony, neither her card(s) nor PIN code were ever compromised.

The disputed payment transactions occur over a relatively long period, between November 2022 and July 2024 (notwithstanding the 13-month rule under the PSRs). I find it difficult to accept that if a fraudster was involved, they would be able to carry out the transactions for such a long time without getting caught. A fraudster would have effectively stolen Ms G's card(s), used it to make the disputed transactions, and then returned the card(s) to Ms G unnoticed – on several occasions and over a long period. I find this to be unlikely, particularly given the risks involved for any fraudster.

For the above reasons, I am persuaded, on balance, that Ms G authorised the disputed payment transactions in this matter.

#### Cloned card(s)

In Ms G's response to the investigator's findings, she suggested that her card(s) might have been cloned.

It is generally accepted that cloned cards will not work where a physical card is present – for example, chip and PIN, contactless payments or at an ATM cash machine, etc. This is because for these types of transactions, the card's chip is engaged in different ways.

Many of the disputed payment transactions in this matter required Ms G's physical card to be present. Therefore, with the above in mind, and technical evidence I have seen, I find it unlikely that Ms G's card(s) was cloned.

#### Other complaint

Ms G has made reference to a previous complaint our service dealt with by way of final decision. However, it would not be appropriate for me to make any comment on that complaint in this decision.

#### Conclusion

Taking all the above points together, I find that HSBC acted fairly and reasonably in the circumstances of this complaint. Therefore, I will not be directing HSBC to do anything further.

#### **My final decision**

For the reasons set out above, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 13 February 2025.

Tony Massiah  
**Ombudsman**