

## The complaint

Mrs R complains that HSBC UK Bank Plc won't refund payments she says she didn't make with her credit card.

## What happened

Mrs R says she lost her credit card and so she didn't make two payments abroad on 4 January 2022. The total she disputes with exchange fees is £2,112.47.

HSBC said it wouldn't be refunding this money. Mrs R had confirmed she'd kept the PIN with the card. And so, she'd not kept her details safe and had been grossly negligent.

Our investigator recommended that the complaint be upheld, and the money refunded with any interest, fees and charges. HSBC didn't dispute that Mrs R had lost the card and not made these payments. So, she hadn't authorised them. As these involved the use of credit, the Consumer Credit Act 1974 applied, and meant that a consumer wouldn't be liable for any loss arising from the loss of a credit facility unless the consumer had consented to its use.

Mrs R accepted our investigator's recommendations. HSBC said that it didn't. It agreed that Mrs R didn't use the facility but it referred to its terms and conditions and the requirement to *"take reasonable steps to stop the account being used for fraud"* and that this could be by *"not keeping your PIN or passwords with the card or making it easy for someone else to find them"*. It intended to provide further clarification of its position.

## 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.

I need to take into account the Payment Services Regulations 2017 in considering this complaint. These say a payment can only be authorised if it was consented to. So, it's not enough for it just to be authenticated, say with a card and PIN. Where credit is involved, as is the case here on credit cards, the Consumer Credit Act 1974 applies, and it states that a consumer wouldn't be liable for an unauthorised payment *unless* they consented to someone else having possession of that card.

The position here is that these payments were made with the genuine card and PIN and so authenticated. I note that this was the second claim of fraud Mrs R had made within a month – the earlier one while she was on holiday in December 2021. Her card involved then and it seems PIN had been replaced after she'd reported fraudulent payments and signed a declaration about those on 22 December 2021. She'd used the new card having stored the details for online payments and so said she didn't notice it missing until she received her statement dated 10 January 2022. These disputed payments had been made abroad in a different country to the previous claim. And Mrs R said neither she nor any close family member left the country at that time. HSBC hasn't investigated authorisation any further and seems to have relied in any event on her not taking sufficient care of her card details. There's also no recording of her reporting the payments. So, taking all that into account and

the position of HSBC I won't fairly go behind its conclusion that these payments weren't authorised.

Through our investigator I asked HSBC to clarify its position on the complaint pointing out that the terms and conditions I'd seen for its credit cards referred to the agreement being regulated under the CCA. And I also highlighted the following term with my emphasis added:

*"2.3 If you, or an additional cardholder, allow someone else to use a card or the card number, you'll be responsible for any transactions they make. But you'll only be responsible up until you tell us that the card may be misused. You should tell us using the contact details below. **You won't be responsible for any other transactions you or an additional cardholder haven't authorised.** That includes transactions made with the card or card number remotely (for example over the Internet, phone or by mail order). We'll refund those straight away."*

HSBC didn't provide any further comments. While I understand why HSBC has concerns about the way Mrs R kept her PIN with her card I need to apply the regulations in thinking about her responsibility for what happened. Taking the relevant part of the CCA referred to by our investigator into account and the seemingly consistent term of the card agreement above I don't see a reasonable basis here on which HSBC can hold Mrs R responsible for these unauthorised payments. So, I agree they should be refunded in the way set out by our investigator.

### **My final decision**

My decision is that I do not uphold this complaint and I require HSBC UK Bank Plc to:

- 1) Refund the disputed payments to Mrs R's account.
- 2) Refund any interest, fees and charges relating to these payments to her account from the date the payments were debited to the date of refund.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 13 December 2022.

Michael Crewe  
**Ombudsman**