

The complaint

Mrs S complains that HSBC UK Bank Plc trading as first direct (“first direct”) held her responsible for a failed cash withdrawal.

What happened

Mrs S explained that she used an automated teller machine (ATM) to withdraw cash for her shopping. She said that she tried to withdraw £80 from the ATM and as the machine was about to deliver the cash, it was retracted back into the ATM. Mrs S said the notes were presented in a different way to how they were usually given out from the ATM.

Mrs S went into the shop near the ATM, but they didn’t have responsibility for it and Mrs S was asked to call her bank about it. She called first direct and explained what had happened at the ATM.

Mrs S was advised that if the cash was retracted, it should reappear on her statement some days later. Meanwhile she was advised to re-try the ATM, which she did and was successful in receiving her £80 cash withdrawal.

Nothing was returned to Mrs S’s account (from the failed withdrawal) and she asked first direct about it. They issued a temporary refund of the £80 to her account while they looked into what had happened. They did this by approaching the operator of the ATM. First direct were supplied with audit data concerning the two withdrawals made by Mrs S, and both showed that they were successful.

The evidence supplied also showed that the ATM was balanced the following day and a slight excess was found in it of £10. There was no evidence of a cash retraction when Mrs S first used the ATM.

Based on this evidence, first direct informed Mrs S that her temporary refund was being taken back because they were holding her responsible for the withdrawal based on the response they received from the ATM operator.

Mrs S was unhappy with how first direct had handled her issue and lodged a complaint with them. They again looked into what had happened but didn’t change their position, so Mrs S then brought her complaint to the Financial Ombudsman Service for an independent review.

An investigator was assigned to look into Mrs S’s complaint and both parties were asked for information about the situation. Mrs S was able to confirm her version of events and she also said that whilst she was on the phone to first direct, another customer used the ATM successfully, so she thought it was safe to try it again.

First direct provided audit data for the ATM activity reported by Mrs S and further details of their own investigation, including a copy of her call to them made at the time by Mrs S.

After reviewing the evidence, Mrs S’s complaint wasn’t upheld and the investigator commented that:

- The disputed ATM withdrawal was authorised by Mrs S.
- Evidence provided by the ATM operator showed the ATM was checked the following day and wasn't found to have any funds that could account for Mrs S's withdrawal.
- There was no evidence of a cash retraction.
- The funds in the ATM were as expected, indicating the cash withdrawal was successful.
- First direct followed their procedures when temporarily refunding Mrs S. The funds were only redebited once evidence of the withdrawal was received.

Mrs S disagreed with the investigator's recommendations and added that:

- She was upset that she wasn't being believed.
- She'd made a call at the time to first direct about the issue.
- Mrs S thought at CCTV footage would show what happened and would also show the successful withdrawal by the man using the ATM.
- Mrs hadn't seen the ATM audit data which would show what happened.
- Mrs S was concerned that HSBC were involved in the complaint, as opposed to first direct.

As no agreement could be reached, the complaint has now been passed to me for a decision.

Based on the detailed description given by Mrs S, I asked first direct to go back to the ATM operator and seek further audit data from the ATM in question.

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 was sorry to hear of the troubles experienced by Mrs S. I also want to make it clear that her version of events isn't considered anything other than a genuine recollection of what she remembers happening.

I asked for further information about the ATM because Mrs S was adamant that she didn't receive her cash at the time. This wasn't an occasion where the call to them was made days later, rather it was made at the time, near to the ATM itself.

I also wanted to reassure Mrs S that I've considered all the available evidence, including additional audit data, her call to first direct and her submissions to our service. If there's a reference to HSBC, this is in relation to the overall regulated business. First direct are part of HSBC, so for the purposes of this complaint, a reference to them also means first direct.

It's clear that there's a difference between the two parties, and where there is a dispute about what happened, and the evidence is incomplete or contradictory, I must reach my decision on the balance of probabilities – in other words, on what I consider is most likely to have happened in light of the available evidence.

There's no argument that Mrs S was using the ATM to withdraw cash, so for the purposes of this complaint, the ATM withdrawal(s) were authorised.

I've examined, in detail, the ATM audit data to determine what was happening when Mrs S used it. One of the first things I noted was that Mrs S said another man was using it when she was on the phone to first direct. Unfortunately, the audit data doesn't support that. What it shows is that Mrs S made a withdrawal request for £80 which was successfully dispensed, followed about 12 minutes later by her second withdrawal request, which was also successful.

There was no other recorded use of that ATM between the withdrawal's made by Mrs S, so the man observed by her was no doubt at the ATM, but he didn't carry out an operation, because there's no data to support that. That may well be the explanation for what happened to Mrs S's funds, but as far as whether the ATM dispensed them, there's no indication it was malfunctioning or recorded the retraction of the cash.

If the ATM pulled the cash back in, I'd expect the audit data to show that as it would normally be a recordable event. Also, in such situations, I'd expect those retracted funds to be deposited in the reject or "purge" bin. This is where failed transactions due to problems with the cash are deposited. There were no such funds in this part of the ATM and there are no reports supporting that the cash was retracted.

I'm sorry to have to disappoint Mrs S, but the available evidence doesn't show that the withdrawal was unsuccessful, so I think, on balance, it's reasonable for first direct to hold her liable for the withdrawal.

I recognise Mrs S wanted the CCTV to be reviewed, but here that wasn't requested (at the time) and I don't know if it was even available. I don't think it was unreasonable for first direct to rely on the audit data from the ATM operator to answer the query by Mrs S.

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 Mrs S to accept or reject my decision before 1 March 2024.

David Perry
Ombudsman