

The complaint

Mr G is unhappy HSBC UK Bank Plc won't refund payments he says were made when he lost his card abroad.

What happened

The details of this complaint are well known to both parties, so I will not repeat them again here in detail. The facts are not in dispute so I will focus on giving the reasons for my decision.

Mr G was abroad when he lost his card wallet. This contained cards for three different companies, but each card had the same PIN. Mr G reported his HSBC card as lost when he returned home, but said it had already been used by a third-party in this time. Mr G wants HSBC to refund him for the payments he says were made without his authorisation.

HSBC didn't agree to refund Mr G. Our investigator looked into his complaint but didn't uphold it, so Mr G asked for an ombudsman to review it.

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.

Under the relevant Payment Service Regulations 2017 (PSRs) Mr G can only be held liable for transactions that he's authorised. Therefore, the first consideration is whether or not these payments were authorised.

HSBC treated these transactions as unauthorised, but said Mr G wasn't due a refund as he failed to keep his security details safe. When HSBC was investigating the transactions, Mr G explained that he had a small piece of paper in his card wallet, alongside his cards, that contained his PIN number. I therefore can't say it was wrong for HSBC to take this stance, as it would be access to Mr G's PIN that enabled the transactions to take place. This would be considered grossly negligent behaviour under the PSRs. However, since then Mr G has explained that the piece of paper was not in fact in his card wallet, but remained in the UK, as his wife then found it in their home. So he says the person who found his card wallet and cards had no information about his PIN.

My role is to make a decision based on weighing up the evidence available. It's difficult to place a lot of weight on what Mr G has told us, because his testimony has changed. But even if I was to accept he did later find the relevant piece of paper at home, this still shows he was both willing to write his security credentials down and that he then lost these for a period of time and didn't notice. So this doesn't indicate he's acting as he should, or taking the level of care expected of him by HSBC in relation to his account.

I've considered what a fair outcome is in this case and I can't agree that HSBC should refund Mr G for the transactions he's disputed. As it doesn't impact my outcome here, I have decided to accept Mr G's latest testimony, that his PIN number wasn't in fact in the card

wallet, as he initially thought. But then there are only three scenarios that explain what happened:

- Mr G authorised for his card to be used for the transactions in question – either by him making them or him knowingly giving another party the ability to do so
- A third party found his lost card wallet and was then able to correctly guess Mr G's PIN
- A third party observed Mr G's PIN somewhere and then obtained his card wallet and spent the funds without his authority

I cannot see how a third party could correctly guess Mr G's PIN number without any other information. Considering the possible number of combinations available for a PIN, this is not a plausible explanation. So then either someone observed Mr G's PIN or he authorised the payments.

Mr G's account had a nominal balance up to the end of April 2023, but he then moved £20,000 into the account. He did this in two payments, the second one on the same day the reported transactions took place on this account. Mr G has explained he moved this money as he was going to buy his wife a car on his return to the UK. But I can see from another case we have regarding the same lost card wallet, that Mr G has reported a transaction from several days prior to 2 May 2023 as fraudulent. So it seems Mr G had already lost his card wallet when he made this deposit, and also when a card payment was made on this account that I can't see was disputed.

Mr G has explained he couldn't report the unrecognised transactions to HSBC straight away as he couldn't do this abroad. He's explained there wasn't time to contact it before he was physically home, as his journey involved a lengthy coach trip from the airport, with poor signal. It seems unusual that Mr G chose to move such large sums into his bank account while he was still abroad, considering he wasn't intending to spend the money before he got home. And that he didn't notice his card wallet was lost for so many days, despite him evidencing he was going out in this time and we can see he was signing into his online banking, including to move a large sum of money.

Mr G didn't lose his phone or online banking credentials. And HSBC has said that no balance checks were made using the card, so only Mr G, or someone he shared the balance with, knew this information. The reported transactions use the vast majority of Mr G's balance, but they don't clear his account. And the first reported payment on this case is two days after the first reported payment on another case, so only after Mr G has paid an additional £10,000 into this account. Had the largest disputed payment been made sooner, it wouldn't have been successful, as Mr G didn't have sufficient funds in his account.

This then makes it also seem highly unlikely that the payments occurred because a third party observed Mr G's PIN. If they had access to his cards and PIN, it's not clear why they would wait several days to use them. Or how they would know Mr G's balance/that he was going to top-up the account, so to wait to start spending. And then only spend enough to nearly clear the account, but not make any payments that would've caused it to go overdrawn.

I also note that no payments were attempted after Mr G reported his card as lost. A third party wouldn't know when/if Mr G had reported the cards as missing. But we can see in this case that the person who had the HSBC card chose to stop spending on it at this time, even though they hadn't had any payments declined to suggest they cleared the account, or that the card had then been blocked.

Considering all the information we hold, I cannot see there's a plausible or persuasive explanation for what has happened in this case other than it was Mr G who authorised the payments. I don't know whether he carried out any of the payments himself, but I consider that the payments were carried out with his authorisation – either he made the payments or gave his card and PIN to a third-party to do so. So HSBC doesn't need to refund any of the disputed payments as I consider it can hold Mr G liable for them.

My final decision

For the reasons set out above, I don't uphold Mr G's complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 24 April 2024.

Amy Osborne
Ombudsman