

The complaint

Ms L has complained that HSBC UK Bank Plc won't refund transactions she says she didn't make or otherwise authorise.

What happened

In 2023, a series of payments were taken from Ms L's HSBC account using a direct debit instruction, totalling over £800.

As Ms L had recently been the victim of identity theft, her telephone and online banking were blocked at that time. And HSBC were not sending her paper statements. So she explained that she was unaware of the transactions until she got a notification about an overdraft. She then checked her account in branch and reported the transactions.

HSBC held Ms L liable for the payments in dispute on the basis that the direct debit had been set up using a code which was displayed on her statements.

Our investigator looked into things independently. HSBC didn't respond to our investigator's request for information. They upheld the complaint. HSBC didn't reply, so the complaint's been passed to me to decide.

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.

HSBC has not sent us any substantial technical evidence to show that the disputed payments were properly authenticated. So I cannot be satisfied of that. This makes it difficult for me to conclude that the payments were authorised.

Even if I were to assume that the payments were properly authenticated, HSBC would still need to evidence that Ms L consented to them, or that she failed to keep her account safe either intentionally or through acting with gross negligence. Otherwise, HSBC has to refund the transactions.

HSBC has not provided any evidence which reasonably shows or substantiates that Ms L consented to these payments, nor that she failed to keep her account safe either intentionally or by acting with gross negligence.

HSBC pointed out that in order to set up a direct debit, this merchant normally required a code which they displayed on Ms L's statements via a 1p credit. However, HSBC has not evidenced that this code was actually provided to the merchant, or that the merchant's process was not otherwise bypassed. And given that HSBC has confirmed that it was not sending Ms L paper statements and she did not have access to online or telephone banking at the time, it doesn't seem possible for Ms L to have been able to view that code herself.

Meanwhile, there were attempts to access Ms L's account from an unknown device at the time. And before this direct debit was set up, someone attempted to open a loan in Ms L's name with HSBC, which HSBC has confirmed was fraudulent. The merchant allowed HSBC to de-link Ms L's account from them. As mentioned before, Ms L appears to have been genuinely unaware of the activity until she went into branch and could see the payments. And her testimony has been consistent and plausible.

So HSBC has not sufficiently evidenced that Ms L authorised the disputed payments, nor that she failed to keep her account safe. On the other hand, the evidence indicates that someone was attempting to defraud her.

So taking into account everything that's been said and provided, I don't think HSBC can hold Ms L liable for these transactions.

Lastly, I understand that Ms L found the matter to be most stressful, which I sympathise with. It's never easy to be subjected to fraud. With that said, I agree with our investigator that it's the fraudster who was primarily responsible for committing the fraud, and so for the resulting stress, rather than HSBC. I've not found a reason to award further compensation in this particular case.

Putting things right

I direct HSBC UK Bank Plc to:

- refund the disputed transactions; and-
- pay simple interest to Ms L on those transactions, at the rate of 8% simple a year, payable from the date they were last debited until the date they're returned[†]. This is to compensate Ms L for the time she didn't have her money.

[†] If HSBC considers that it's required by HM Revenue & Customs (HMRC) to deduct tax from that simple interest, it should tell Ms L how much tax it's taken off. It should also give Ms L a tax deduction certificate if she asks for one. Ms L may be able to reclaim the tax from HMRC if she doesn't normally pay tax.

My final decision

For the reasons I've explained, I uphold Ms L's complaint, and direct HSBC UK Bank Plc to put things right by doing what I've said above.

If Ms L accepts the final decision, HSBC UK Bank Plc must pay her within 28 days of the date our service notifies it of the acceptance.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 27 May 2024.

Adam Charles
Ombudsman