

The complaint

Miss S complains that HSBC UK Bank Plc ('HSBC') won't refund money she says was taken from her account without her knowledge, and about HSBC's actions in relation to the debt caused by those transactions.

What happened

Miss S says that in 2018, P (her ex-partner) deposited a cheque into her account then completed unauthorised transactions. When the cheque was returned unpaid, the money was taken out of Miss S's account, taking it into unarranged overdraft.

Ultimately, HSBC closed Miss S's account when the overdraft wasn't repaid and sold her debt to a debt collection company.

What Miss S says happened:

- P asked her to meet him in 2018, and while they were together, he took her bank card without her knowledge – which he returned later that day.
- P told her he was going to deposit a cheque into her account, but Miss S wasn't given any details of the cheque.
- The next day P met up with Miss S again and demanded her card. Miss S says he had a knife and told her not to tell anyone about what was happening and threatened the safety of her parents. That evening, P returned the card to her.
- Over the next few days Miss S saw a large amount of money withdrawn from her account but was unable to go into a branch to discuss it due to work commitments.
- Miss S received a letter from HSBC in December 2018, which confirmed that the cheque deposited into her account had been returned unpaid.
- Miss S says she believed the debt on her HSBC account had been cleared and the matter was resolved.
- She received no further communication about her account until 2023, when a debt collection company contacted her asking for payment of the overdrawn balance from her HSBC account.
- When Miss S lived with P, he was abusive and coercively controlled her. P had a gambling addiction, which Miss S occasionally loaned him money for, and he sometimes paid back. P coerced her into taking out loans to fund his gambling addiction.
- While P and Miss S lived together, she kept her PIN and banking credentials written down on a piece of paper due to memory problems. Miss S believes P may've retained that information after the relationship ended.
- Letters that HSBC sent to Miss S in relation to her overdrawn account, were sent to the wrong address – which is why she never received them. HSBC also sent letters to an address that was listed in relation to her employment.

Miss S says HSBC shouldn't have allowed the cheque to be deposited into her account, as it was obviously fraudulent. Also, they shouldn't have allowed any transactions to be made,

until the cheque had cleared. Miss S feels HSBC should've intervened when the disputed transactions were made, based on the size of the transactions in relation to Miss S's previous account activity. She is also unhappy with HSBC's actions in relation to the overdrawn balance on her account, which was caused by the cheque being returned unpaid.

These are the transactions that were made on Miss S's account, which she says she didn't authorise.

Date	Note	Details of transaction	Amount
19.12.2018		<i>Cheque deposited through a HSBC branch</i>	£36,638.21 <i>cr</i>
22.12.2018		Bill payment to O	£9,987.00
22.12.2018		Bill payment to F	£9,945.00
22.12.2018		ATM cash withdrawal	£280.00
22.12.2018		Bill payment to O	£5,000.00
23.12.2018		Internet Transfer to Miss S's savings account	£110.00
24.12.2018	*	Debit card purchase with K	£4,005.36
24.12.2023	*	Debit card purchase with M	£3,499.29
24.12.2018	*	Debit card purchase with T	£4,500.00
24.12.2018		<i>Cheque returned unpaid and debited from account</i>	

*These card purchases were made on 22 December 2018, but don't appear on Miss S's bank statement until 24 December 2018, due to the processing delay with purchases made on a Saturday.

Miss S raised a fraud claim with HSBC in 2023. HSBC say Miss S authorised the transactions and declined to refund her. They also say they tried to contact her between February 2019 and June 2019 about the overdraft on her account, before moving her debt to the debt collection company.

Miss S wasn't happy with HSBC's response, so she brought a complaint to our service with the help of a representative.

An investigator looked into Miss S's complaint but didn't uphold it. The investigator felt it was most likely Miss S had authorised the transactions, referring to calls Miss S had with HSBC in December 2018. The investigator also highlighted that the bill payments were done through online banking using Miss S's registered mobile device. In regards to the debt on Miss S's account, the investigator referred to attempted calls and text messages from HSBC trying to discuss the matter with her. The investigator thought it was more likely than not Miss S had known about the overdrawn balance on her account.

Miss S disagreed with the investigator's opinion and raised the following points:

- Any actions taken by Miss S (for example, calls to HSBC) were done while under duress and having been threatened.
- HSBC shouldn't have allowed the cheque to be deposited to the account as it was obviously fraudulent.
- HSBC shouldn't have sent mail to the address registered for her employment, also the address details they had on file for Miss S were incorrect.
- Miss S believes P used her mobile device to make the bill payments without her knowledge.
- HSBC shouldn't have allowed any transactions to be made until the cheque had cleared.

- Miss S was never in the location where the card purchases were made, she was working at the time.
- Miss S couldn't recall any phone calls with HSBC in December 2018, but it would've been done while under duress.
- We're unfairly suggesting that Miss S is complicit in the fraud.

As the case couldn't be resolved informally, it was passed to me to review.

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.

Where there is a dispute about what happened, and the evidence is incomplete or contradictory, I've reached 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.

I'm really sorry to hear about the difficulties that Miss S faced and continues to face in relation to the cheque that was deposited in December 2018.

Having reviewed the evidence, I've reached the same outcome as the investigator. I'd like to reassure Miss S, that in reaching my decision, I'm not discounting her testimony in relation to the duress and coercion she experienced.

The card transactions made on Miss S's account

In broad terms, the starting position in law is that HSBC are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations 2017 (PSR's). And, generally, HSBC can hold Miss S liable for the disputed transactions if the evidence suggests it's more likely than not that she made or authorised the transactions herself.

It's important to explain, that if Miss S was coerced into making the payments, made the payments under duress or was deceived about the payments purpose - that doesn't usually mean the transactions are unauthorised.

There are two steps to authorisation: authentication and consent. HSBC has provided evidence which shows the card transactions were completed using chip and PIN. That means Miss S's physical card was used for the transactions and the transactions were authenticated.

For the second step, I need to decide if I'm satisfied that Miss S consented to the transactions. In this case, Miss S rang HSBC three times on 22 December 2018 and twice on 23 December 2018.

I'm satisfied based on these phone calls that Miss S consented to the card transactions. I say this because during the phone calls the following points were discussed:

- Miss S confirmed she was trying to make a purchase in M (as set out in the table above).
- Miss S requested for her transaction limit to be temporarily increased so she could make a card purchase in relation to T (as set out in the table above).

Based on the calls Miss S had with HSBC it's clear that she was aware of, if not making, the card purchases on 22 December 2018. She rang multiple times and there is nothing in the calls that would suggest she was under duress.

She told HSBC that she was purchasing foreign exchange for a holiday and was aware that one of the payments (to M) wasn't going through. Then while on the phone to HSBC she told them that the transaction had just gone through – which suggests it's more likely than not Miss S was present while the transaction was being made.

I'm also conscious that when Miss S called HSBC on the day after the card purchases, she asked them to confirm if the pending card transactions had gone through and said that she had been to X (a shopping centre) where the purchases were completed. HSBC asked Miss S if she wanted to cancel the transactions and she said she didn't.

As I explained above, the transactions show on Miss S's statement dated 24 December, but were made in person with the merchants on the 22 December. The difference in the date is the processing delay.

Miss S had told us that P took her card without her knowledge and that she was under duress and being threatened. But, based on the evidence, I'm satisfied that she has authorised the card transactions and that HSBC can hold her liable for them.

The bill payments made on Miss S's account

All of the bill payments were made using Miss S's registered device. This means the person making the payments had to have access to Miss S's device, as well as her banking credentials to log in and make the payments.

Miss S says P must've accessed her device without her knowledge while she was with him. But, I have to take into account that Miss S knew the payments had gone out when she contacted HSBC on 23 December – the day after the payments were made. In the call, Miss S referred to looking at her online banking and wanting to check what her balance was. She said it was showing as £11,000 in credit, but with no available funds. She also referred to the transactions from the previous day not showing, which suggests she had looked at the account activity.

I appreciate that Miss S feels P could've seen her online banking credentials when they lived together, six months prior. But that would mean P kept that information, so that he still had access to it when they met up six months later. I appreciate that this could've happened, however I'm not persuaded that this is the most likely scenario.

Miss S's testimony in relation to the card purchases, conflicts with the evidence we've been given from HSBC. Unfortunately, this does call into question the reliability of her testimony in relation to the bill payments.

Even if Miss S had completed the bill payments under duress, I'm satisfied that it's more likely than not she knew about the payments and consented to them. So, HSBC can hold her liable for them.

Should HSBC have intervened when the card and bill payments were made?

I have also considered whether HSBC should've intervened when the card purchases and bill payments were made and whether that intervention could've prevented Miss S's loss.

But, even if I think HSBC should've identified a potential risk of financial harm, I'm not satisfied that intervention would've made a difference. I say this based on the calls Miss S had with HSBC where she appeared to be aware of and authorising the transactions. So, if HSBC had called Miss S to query any of the card purchases or bill payments, I think it's more likely than not Miss S would've given a plausible reason for the payments which would've satisfied any concerns HSBC might've had.

In a couple of the calls in relation to the card payments, Miss S refers to purchasing travel funds and making purchases in relation to a holiday. Also, HSBC has contact notes from when they called Miss S about the cheque, and she told them that it was from a family member to cover an upcoming holiday.

So, it appears that Miss S had a cover story to explain why she was making the transactions and why she'd received the cheque that was deposited into her account. So, I'm not satisfied that intervention by HSBC would've prevented any of the payments from being made.

I think it's also worth noting that it's unclear whether Miss S had any benefit from the card purchases or the bill payments. It's possible that Miss S received some of the foreign currency that was purchased using her card, or that she has received some benefit from the other card purchases or the bill payments.

Should HSBC have allowed the cheque to be deposited and for Miss S to draw against it prior to the funds clearing?

Miss S says that HSBC shouldn't have allowed the cheque to be deposited to her account, saying that it was obviously fraudulent.

But, having reviewed the cheque, I'm not satisfied that I can fairly say HSBC shouldn't have allowed the cheque to be deposited. There wasn't anything significant in the information or the appearance of the cheque that means HSBC shouldn't have allowed it to be deposited. I appreciate that the payer of the cheque is unusual, however the payer name is similar to genuine names that exist. So, I'm not satisfied that HSBC acted unreasonably in allowing the cheque to be deposited.

Miss S also feels that HSBC shouldn't have allowed any funds to be drawn against the cheque, before it had gone through the cheque clearing cycle and the funds were cleared.

In 2018, when Miss S deposited the cheque, the cheque clearing cycle generally took up to six days. Banks would usually start paying interest on the deposited cheque, if it was in an interest bearing account, on day three. They would also usually allow a customer to draw on the cheque prior to it completing the clearing cycle.

From what I've seen the cheque was returned as unpaid on 24 December 2023, after Miss S had made the card purchases and the bill payments. HSBC then contacted Miss S to let her know and the cheque value was debited to Miss S's account.

I'm satisfied that HSBC have followed the correct process in accepting the cheque for deposit and can't say they acted unreasonably in allowing Miss S to draw funds against the cheque prior to it clearing.

How HSBC handled the debt recovery in relation to Miss S's account

Miss S has raised concerns about HSBC not contacting her about the outstanding balance on her account, closing her account without trying to resolve the situation and sending letters to incorrect addresses.

Based on the evidence provided by HSBC, I can see that they wrote to Miss S on 24 December 2018 to notify her that the cheque was returned as unpaid. Miss S's rep has confirmed receipt of that letter.

On 18 February and 20 February 2019, HSBC's contact notes indicate a voicemail was left for Miss S on her registered phone number. They again left a voicemail on 22 February 2019.

With no response to their attempted calls, HSBC changed to writing to Miss S asking her to contact them in relation to the overdrawn account balance.

The address that HSBC used on the letter dated 25 February 2019, was an address which Miss S has confirmed she gave them. Miss S says this was the address of her current partner at that time.

On 4 March 2019, HSBC sent a text to Miss S's registered phone number saying "we've tried to call you but were unsuccessful. Please call us on X. Your account is under review".

As Miss S didn't respond to the voicemails, letter or text message, HSBC decided to close Miss S's account and wrote to her on 5 March 2019 at the same address as the previous letter. I don't think HSBC acted unreasonably in closing Miss S's account at this point, as her overdrawn account was incurring interest and charges.

HSBC wrote to Miss S at the same address again on 25 March 2019, advising her that if she didn't respond they would require her to repay the full outstanding balance on her account. Further letters were sent 1 May and 22 May 2019.

Miss S didn't respond to any of these attempts to contact her and discuss her account.

In 2020, HSBC started writing to Miss S at the address that was listed for her employment. I appreciate this wasn't Miss S's home address, however based on Miss S's lack of response with correspondence sent to the other address, I don't think it was unreasonable for HSBC to try using this address to get in touch with her.

Based on the evidence, I'm satisfied that HSBC appropriately tried to contact Miss S about the overdrawn balance on her account and tried to rectify the situation with her. I can see that in these letters, HSBC offered Miss S the option to call them and discuss a repayment plan, if she was unable to repay the debt or had financial difficulties. However, Miss S didn't respond to any of the communication attempts that HSBC made.

I think it's more likely than not Miss S was aware of the overdrawn balance based on the letter sent in December 2018, letting her know the cheque was returned. Also, because the usual transaction activity on Miss S's account stopped in January 2019. So, Miss S must've started using a different account for her day-to-day banking, which I think is more likely than not due to the overdrawn state of her account.

The address that HSBC originally wrote to was the address provided by Miss S. I appreciate that Miss S may've moved from that address and that it might not have matched the electoral information, however it's incumbent on Miss S to notify HSBC of any change in her contact information. Also, that the other address may not have been entirely correct, however based on Miss S not responding to any previous contact attempts, I'm not satisfied that the mail going to the correct address would've resulted in different action being taken.

Miss S says she didn't answer calls from withheld or unknown numbers, because she was worried that it might be her ex-partner. However, I think HSBC made reasonable attempts to contact Miss S, by also using text messaging as well as sending written correspondence to two separate addresses.

Based on Miss S not responding to HSBC's attempts to contact her about her overdrawn account, I'm satisfied that HSBC acted fairly in closing her account and ultimately moving her debt to a debt collection company.

In summary

I'm satisfied that it's more likely than not Miss S authorised the transactions that were made on her account on 22 December and 23 December 2018, so HSBC can hold her liable for them. I don't think HSBC acted unreasonably in allowing the cheque to be deposited to Miss S's account, or in allowing transactions that drew on the cheque funds before it cleared.

Even if HSBC should've identified a potential risk of harm based on the payments Miss S was making, I'm not satisfied that intervention is likely to have prevented the payments or Miss S's loss.

I'm also satisfied that HSBC made reasonable efforts to contact Miss S about her overdrawn account, to try and resolve the situation. And, when Miss S didn't respond, that HSBC acted fairly in closing her account and moving the debt to a debt collection company.

I'm really sorry to disappoint Miss S, but I'm not satisfied that I can fairly uphold her complaint or ask HSBC to refund her.

My final decision

My final decision is that I don't uphold this complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 27 November 2024.

Lisa Lowe
Ombudsman