

The complaint

R complain that HSBC UK Bank Plc (“HSBC”) failed to refund transactions they didn’t recognise.

What happened

R are a Ltd company and are represented here by Mr W who was also involved in the incident. So, for ease of reading I’ll mainly refer to him throughout.

Mr W was abroad and received a notice from HSBC that they’d detected suspicious activity on the business account after transactions were made using the debit card linked to the account.

Mr W told HSBC that he didn’t recognise the two transactions, one for £78.22 and a second for £2,808.23. There were other attempts by the same merchant to use the card, but these were blocked by HSBC.

Mr W told HSBC that he still had his debit card and that no one else had used it or knew the personal identification number (PIN) for it. Mr W believed that his card had been cloned and he sought a refund from HSBC. Mr W reported the transactions to the local police.

HSBC advised that the two disputed card transactions had used the genuine card (not a clone) because the “Chip” had been read and the correct PIN entered to complete the transaction. The details of the merchant who took the payment showed they were in the same country as Mr W was visiting but a different city. Mr W confirmed he hadn’t visited this particular city.

HSBC declined to refund the transactions because they used the genuine card. Mr W made a complaint in R’s name and after looking into the situation again, HSBC retained their view that R were responsible.

Mr W brought R’s complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the situation and asked both parties for information about the complaint.

Mr W was able to say that:

- He retained his card and had used the card and PIN function in a mall near to where he was staying.
- No one else knew the PIN and it wasn’t written down.
- He never travelled to the city where the disputed transactions were believed to have taken place and provided evidence of this.
- He believed his card was cloned.

- He was alerted by HSBC's own fraud message about unusual transactions which he advised was not him.

HSBC provided details of their investigation and audit data linked to the transactions carried out whilst Mr W was abroad. In summary this showed:

- The two disputed transactions were carried out with the genuine card because the Chip was read on it and the correct PIN was used.
- There was at least one previous use of the card and PIN by Mr W in the same city.
- Two transactions prior to the disputed use of the card in a mall were reported by HSBC to be carried out by the magnetic stripe on the card and Mr W's signature. They later clarified the card's Chip had been read.
- Further transactions to the same merchants were blocked.
- There was no explanation how the card and PIN could have been used by anyone else.

After reviewing the information, the investigator didn't think it was unreasonable for HSBC to hold R liable for the two disputed transactions. It was commented that:

- It's likely that the merchants location was in the same city as Mr W was visiting, rather than one further away.
- It was believed the two transactions prior to the loss were made using the magnetic stripe and a signature.
- The use of the card was Chip and PIN which is a robust system and no confirmed instances of them being cloned has been reported.
- Mr W still had his card.

R (through Mr W) strongly disagreed and asked for a further review of their complaint, making further comments, summarised as:

- He continued to believe the card had been cloned.
- It was HSBC who alerted him to the fraud.
- HSBC didn't treat it as fraud.
- Mr W reported that HSBC had asked him to authorise a refund for another payment.

As no agreement could be reached, the complaint has now been passed to me for a decision. As part of my own investigation, I wanted to better understand the situation and asked both parties for additional information. Mr W was able to confirm that:

- He was abroad on business.
- He didn't have any dealings with the merchant who took the disputed transactions from R's card.

- He used Chip and PIN to make the two transactions prior to the disputed payments.
- He said the local police were aware of the cloning of cards which was a common problem in that country.

I asked HSBC to clarify details about the audit data for those transactions carried out by Mr W. They were able to confirm that:

- All transactions (both disputed and undisputed) used the Chip.
- Some earlier transactions were recorded as being verified by the signature.
- There was at least one prior transaction that used the PIN.
- The disputed transactions used both the card's Chip and PIN.
- HSBC clarified that if a cloned card (magnetic stripe) was used, the audit data would show a different set of information.

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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that HSBC can hold R liable for the disputed payments if the evidence suggests that it's more likely than not that they made them or authorised them, but HSBC cannot say that the use of the card and PIN conclusively proves that the payments were authorised.

Unless HSBC can show that consent has been given, it has no authority to make the payment or to debit R's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to R.

It's not my role to say exactly what happened, but to decide whether HSBC can reasonably hold R liable for these transactions or not. In doing so, I'll be considering what is most likely on a balance of probabilities.

I'd first like to clarify the situation concerning cloning. Our service hasn't yet seen any confirmed loss through the cloning of a Chip on a card. But, it is recognised that the magnetic stripe can be cloned, which is one of the reasons I wanted to further examine the audit information provided by HSBC.

HSBC's data shows that the disputed transactions were "Chip read" and not magnetic stripe read. That data supports the position that it was the genuine card issued to R that was used, rather than a cloned card. But, Mr W confirmed that his card never left his possession. I've also thought about how someone could obtain the PIN. Here that's easier to determine because Mr W used both his card and PIN prior to the disputed transactions, so it's plausible that someone could have obtained the PIN through observation or other means.

I've also looked at the location of the merchant which was initially thought to be in a different city which was some distance away. Having reviewed the details of the merchant, it does appear they have a location in the same city that Mr W was visiting, so I don't think the issue of whether Mr W could travel to the other city or not is relevant.

I recognise that this is a finely balanced complaint, Mr W's testimony supports his belief that he didn't make the transactions or allow anyone else to make them. The use of the card is also quite unusual, given two transactions were blocked. But, the audit data for the disputed transactions shows they were "Chip read" and the correct PIN was entered. I can see how someone could obtain the PIN given the earlier use of it, but I haven't been able to determine how the genuine card's Chip was read by a payment terminal. If I discount the cloning of the Chip, then there's little to support the case that it was likely anything other than the card held by Mr W that made the two transactions.

I asked HSBC to explain the codes they receive which relate to how the payment was made. In this case the code equates to "Chip read" and further audit data shows the PIN was used. If the original card had been cloned (through the Magstripe), then the audit code would likely be different. That wasn't the case here, so I can't reasonably conclude that another card was responsible.

I understand Mr W will disagree with me, but based on an objective review of the evidence, I think it's more likely than not that R was responsible for these transactions, and it was both fair and reasonable for HSBC to hold them liable.

The additional transaction Mr W raised appears to be unconnected with this complaint, so I haven't further considered it. If R wish to pursue it, they're able to raise it with HSBC and then to bring it to our service if they remain unsatisfied with the outcome.

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 R to accept or reject my decision before 19 November 2024.

David Perry
Ombudsman