

The complaint

Mr H complained because HSBC UK Bank plc refused to refund him for transactions which he said he hadn't made.

What happened

Mr H said that on 9 April 2024, he was away visiting family for the day. He said he was going to do some shopping, so he went to check the balance on his HSBC account at a cash machine. He said he'd entered his card and PIN and was checking his balance, when two men approached. One of them tapped him on the shoulder, and told him they were maintenance men and that the cash machine wasn't working. Mr H said that he didn't get his card back. The men asked Mr H for his phone number, so they could call him when the machine was fixed and his card came out. Mr H gave them his mobile number.

Mr H said he then started to receive calls from a number which didn't give the caller's ID. He rang HSBC at 15.23 pm, and told HSBC that he'd checked online and had seen that a lot of money had come out of his account.

HSBC investigated. There had been £8,150 spent at a jeweller's shop at 14.26 pm, then cash machine withdrawals between 14.56 and 14.59 for £200, £50 and £10. All had been carried out using Mr H's genuine card and correct PIN.

On 16 April, HSBC spoke to Mr H about its investigation. It pointed out to him that there had been two large credits into his account on 6 April, three days before the disputed transactions and these had facilitated the debits. Mr H said the credits had been from family as he'd been intending to buy a van for his business. HSBC said that the jeweller had reported that the purchaser for the £8,150 transaction had provided ID which was in Mr H's name and matched his details.

HSBC wrote to Mr H the same day, refusing to refund him and saying the payments had been authorised. It said that there had been previous credits which had facilitated the debits. And it said HSBC wasn't responsible for clarifying who made the debits, only where liability should be, based on how the transactions would have occurred.

Mr H complained. He also said HSBC's call handler had been rude.

HSBC sent its final response on 7 May. It didn't uphold Mr H's complaint. It said the genuine card and correct PIN had been used for the transactions. As Mr H had said he'd been "*shoulder-surfed*" by the two men, he could follow this up with the police. HSBC said the police would also be able to help with getting information about whoever had made the transaction at the jeweller's shop. HSBC acknowledged that its call handler could have handled Mr H's call better, and said the individual would be given the required coaching.

Mr H wasn't satisfied and contacted this service.

Our investigator obtained more information, both from Mr H and from HSBC. Mr H told the investigator that at the cash machine where the incident happened, he'd seen the balance

on the screen. And when he then received multiple calls, he'd just had a feeling that there was something wrong, so he'd logged onto online banking and had seen his whole balance had gone.

The investigator didn't uphold Mr H's complaint. He explained that HSBC had provided computer records for Mr H's account for 9 April, and there was no record of Mr H checking his balance that day, as he'd said he'd done at the cash machine. The records would have shown if Mr H's balance had been checked.

And the investigator also said that anyone who had stolen Mr H's card and had seen his PIN would have checked the balance before attempting a payment, to see how much was in the account. Mr H's account had been emptied – but no such balance checks had been made.

So the investigator said he had doubts about Mr H's testimony, based on the timeline of when he'd reported the disputed transactions to HSBC, and the fact there was no record of any online banking login just before Mr H had phoned HSBC. The investigator also listened to the call recording where Mr H had said HSBC's call handler had been rude, and didn't think HSBC need provide any compensation.

Mr H didn't agree. He said that he was telling the truth, and had put his PIN in and seen his balance, and the two men had taken his card. He said he had logged in and seen the transactions he's disputing. He thought something might have been going on with the bank. Mr H also disputed that his ID was used at the jeweller's shop. He said he'd contacted the jeweller, which had said the ID hadn't been in Mr H's name. Mr H asked for an ombudsman's decision.

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.

There are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. So what I have to decide is whether it's more likely than not that Mr H, or someone else, authorised the disputed transactions. For clarity, this doesn't mean that I need evidence from the jeweller about the ID which they took, which the jeweller told HSBC matched Mr H's details and which Mr H said didn't. The outcome depends on who was most likely to have authorised the disputed transactions.

So I've looked at the technical evidence to help me decide who was most likely to have authorised the disputed transactions.

I've seen the detailed computer evidence about Mr H's card usage on 9 April. This shows how each of the payments took place, and they were all carried out using Mr H's genuine card and his correct PIN. Mr H said that he didn't get his card back and thought the men had taken it, and he said the men had seen him put his PIN in.

But the computer evidence also shows that Mr H's card hadn't first been put into a cash machine, nor his PIN, and there hadn't been a balance check, as Mr H had claimed when he said about the two men approaching him. There would have been an electronic record if this had happened – and there isn't any such record of a balance check either before or after the disputed transactions. So Mr H didn't put his card and PIN in for a balance check as he'd reported.

The computer evidence also doesn't show any balance checks before the disputed transactions. It's normal for any fraudster who obtains access to a card and PIN to check the balance – to see how much they can steal. The disputed transactions did empty Mr H's account, but I can't see how any fraudster who had stolen Mr H's card, and shoulder-surfed his PIN, could have known how much Mr H had in his account for them to steal, without carrying out a balance check.

Nor can I see how any fraudsters could have known that Mr H had had two large credits into his account just a few days before.

I've also looked at the online banking records. Mr H told HSBC and our investigator that he found out about the disputed transactions because he received odd phone calls, and then logged on and saw the disputed transactions. But Mr H reported the transactions to HSBC at 15.23 pm on 9 April. There were no online banking logins between the transactions taking place, and Mr H ringing HSBC to report them. He logged on later, but that was after he'd reported the dispute.

Taking all these factors into account, I think it's more likely than not that Mr H authorised the disputed transactions himself.

Finally, I've also listened to the call recording about which Mr H complained and said HSBC's call adviser was rude. Having listened to this, and considered the timescales within which HSBC dealt with Mr H's complaint, I don't consider it would be fair and reasonable for HSBC to have to pay Mr H any compensation for customer service.

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 Mr H to accept or reject my decision before 8 October 2024.

Belinda Knight
Ombudsman