

The complaint

Mr O has complained that HSBC UK Bank Plc won't refund transactions he says he didn't make or otherwise authorise.

What happened

Late one night in summer 2023, Mr O's HSBC card was used for a mixture of attempted cash withdrawals and rapid point-of-sale payments while he was abroad.

Mr O has explained that his wallet was stolen. He blocked the card, reported the matter to the police, and replaced the ID in his wallet. He said he hadn't recorded his PIN anywhere or told it to anyone, and it wasn't a number one could easily guess. But he did use the same PIN for all his different cards.

HSBC held Mr O liable for the payments in dispute, because it couldn't see how a thief would've known the PIN, and because there'd been some confusion over which transactions were in dispute. Mr O has since clarified that all the payments to the point-of-sale merchant in question were disputed.

Our Investigator looked into things independently and didn't uphold the complaint. Mr O didn't agree, so the complaint's been passed to me to decide.

I sent HSBC and Mr O a provisional decision on 30 July 2024, to explain why I thought the complaint should be upheld. In that decision, I said:

HSBC's technical evidence shows that the payments in dispute used Mr O's genuine card, and the correct PIN. But this is not enough, on its own, for HSBC to hold Mr O liable – it also needs to be able to evidence that Mr O consented to the transactions, or that he failed to keep his account safe either intentionally or through acting with gross negligence. Otherwise, HSBC has to refund the transactions.

The main question is how a thief might have learned Mr O's PIN. He didn't record it anywhere or tell it to anyone, it wasn't a number that was simple to guess like his birthday, and it's exceptionally unlikely that it was guessed at random. And Mr O had not used his HSBC card for any PIN-based payments in the recent hours before the disputed activity.

However, Mr O has explained that his PIN was the same across all of his cards. And I can see that Mr O did set his own PIN here. I can also see that Mr O made some genuine payments on the relevant dates, on his credit card with another provider. While that credit card provider was unable to confirm the times of the transactions, this fits with Mr O confirming that he'd made some card payments himself earlier on that night. This means there was a potential opportunity where a thief might have plausibly watched Mr O enter his PIN then stolen his wallet. So I cannot safely rule out that a thief learned Mr O's PIN without his permission.

The disputed payments across the cards follow a fairly typical pattern of fraud, involving attempted cash withdrawals up to and over the limits, and rapid point-of-sale payments quickly draining the accounts. The person using the cards also kept trying to use them after Mr O blocked them, which would be rather unusual if they were acting with Mr O's consent.

Mr O's behaviour appears to support him being the victim of theft. From what I can see, he blocked his cards right after logging into his online banking and seeing the disputed activity. He reported the matter to the police. And he's shown that he replaced the ID in his wallet soon after returning from abroad.

So taking into account everything that's been said and provided so far, I'm not persuaded that Mr O consented to the disputed transactions. There's a potential plausible way that his card and PIN could've been used without his permission, and the surrounding evidence supports this being a case of theft.

HSBC has not provided any evidence which shows that Mr O failed to keep his account safe either intentionally or through gross negligence, and I've found no good reason to conclude that he did. While using the same PIN on all of one's cards may well be considered careless, it does not quite meet the bar of gross negligence or an intentional failure to keep one's account safe.

So based on what I've seen so far, I don't think HSBC can hold Mr O liable for the payments in dispute.

I said I'd consider anything else anyone wanted to give me. Mr O let us know he had nothing further to add. HSBC explained that they don't agree with quite all that I'd said and don't admit liability, but to avoid protracting the matter for Mr O, they agree to follow the provisional decision as a gesture of goodwill.

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.

Neither side have sent me any new evidence or arguments. So having reconsidered the case, I've come to the same conclusion as before, and for the same reasons as set out in my provisional decision above.

Putting things right

I direct HSBC UK Bank Plc to:

- refund the disputed transactions along with any related fees;
- pay simple interest to Mr O 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 Mr O for the time he didn't have his money.

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

My final decision

I uphold Mr O's complaint, and direct HSBC UK Bank Plc to put things right in the way I set out above.

If Mr O accepts the final decision, HSBC UK Bank Plc must carry out the redress 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 Mr O to accept or reject my decision before 2 September 2024.

Adam Charles
Ombudsman