

## **The complaint**

H, a limited company, complains that HSBC UK Bank Plc has declined to refund disputed transactions that it says were carried out by an unauthorised individual.

## **What happened**

H is represented by its director, Mr P.

In November 2023, Mr P says his office was broken into, and items belonging to H were stolen. This included its laptop, a mobile phone, and a debit card for H's HSBC business current account. Between 6 and 8 November 2023, a number of transactions were made using the debit card, and Mr P says these were carried out by someone who was unauthorised to do so. These transactions totalled around £9,750.00.

When Mr P discovered the transactions, he says he contacted HSBC to report them as unauthorised and asked it to refund the money. But the bank didn't think it was liable for his loss. Unhappy with this, Mr P raised a complaint with HSBC. He said that at the time the transactions were made, he was away from the area for a few days, and he believed H's office had been broken into by members of its staff as the lock on the door was loose when he returned. He believed that these same staff members could have learnt the Personal Identification Number (PIN) for the debit card previously by looking over his shoulder when he'd made genuine transactions.

HSBC said:

- H's genuine debit card and the corresponding PIN had been used to make the disputed transactions.
- As Mr P hadn't documented or shared the PIN with anyone, it couldn't understand how the PIN had been compromised.
- The transactions in dispute were not typical fraud, as they were for mainly nominal amounts over a prolonged period of time.
- Mr P should continue to liaise with the Police.
- The disputed transactions would remain on H's account.

Mr P on behalf of H remained unhappy and referred a complaint to this service where it was reviewed by one of our investigators. He felt Mr P had provided a plausible explanation as to how H's debit card was taken and the PIN was compromised, and didn't feel Mr P had been 'grossly negligent' when it came to the security of H's account information. He therefore asked HSBC to refund H's loss. But HSBC didn't agree and 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.

Having done so, I agree with the conclusions reached by the investigator for reasons I set out below.

The Payment Services Regulations 2017 (PSRs) say, in summary, that a payment service provider should generally refund a transaction that comes out of one of their consumer's accounts that they didn't authorise. There are limited exceptions to this, such as when the consumer has breached their obligations to keep their security credentials secure either intentionally, or by being grossly negligent with them.

Mr P on behalf of H has told our service that he was in a different part of the country when the disputed transactions were being made. He's provided a bank statement for a different account that shows transactions being made in a different location. So I accept, on balance, that Mr P wasn't in the area at the time when the disputed transactions were being made, and therefore didn't make them himself.

But that isn't enough to show that Mr P didn't authorise the disputed transactions. He could have easily given H's card to someone else and allowed them to use it on his behalf. And, if that had happened, it could be said that the transactions were authorised and HSBC wouldn't be required to refund them. However, I've considered that Mr P has provided a receipt to show that he purchased items to replace the lock he says was broken to his office, as well as a new laptop and a new mobile phone. And Mr P also reported the theft to the Police and has provided us with evidence of this too. I find this adds credibility to Mr P's version of events. Whilst it's possible that Mr P could have provided this evidence as part of a scheme to defraud the bank by making a false fraud claim, I don't find that the most likely explanation in the circumstances. I'm not persuaded that Mr P intentionally gave somebody else H's card. He denies doing so and nothing I've seen from HSBC persuades me that he did.

Whilst HSBC don't agree that the transactions in dispute are indicative of 'typical fraud,' this term is subjective and, in this case, some of the disputed transactions appear to be for high value items, as well as a transaction to purchase currency. I realise the transactions take place over more than one day, but that doesn't mean they were authorised by Mr P. I also note that HSBC hasn't been able to evidence whether the person using the card tried to use it after it was cancelled. Something that I'd expect to see if the person using the card wasn't Mr P or someone he'd authorised to do so.

HSBC has provided evidence which says shows that H's genuine card was used with the correct PIN. Having carefully considered this evidence, I'm satisfied it shows the genuine card was used, but it doesn't specifically show that the PIN was entered for any of the disputed transactions. However, considering the nature and value of the transactions, and the fact that they were carried out in the UK where the use of a PIN is very widely used, on balance, I'm satisfied that Mr P's PIN for the card was used to carry out some, if not all, of the disputed transactions.

Mr P denies documenting his PIN. And he says he hasn't disclosed it to anyone before either. He told our investigator it's possible that his staff have seen him enter the PIN in the past when he's made genuine transactions in their presence. I accept that this is a possibility. Generally, when near others when entering your PIN into a terminal, I accept it is sometimes possible for people to observe some, if not all, of the digits being entered into a keypad. And this can sometimes be the case even if you make attempts to cover what you're doing. I don't know if this is what happened to Mr P, but I think it's a plausible explanation as to how his staff could've learnt the PIN. And I've not seen anything from HSBC that persuades me otherwise.

During the course of our investigation into this complaint, HSBC suggested that Mr P has acted with 'gross negligence' when keeping his PIN safe. It said that if Mr P was aware that he'd been observed by his staff when entering his PIN but didn't take steps to change it, this amounts to 'gross negligence' and therefore H wouldn't be entitled to a refund for the disputed transactions under the PSR's. As our investigator has pointed out, our service follows case law in believing that the bar for gross negligence is much higher than simple negligence. For me to be satisfied that HSBC can hold H liable for these transactions, I'd need to be satisfied that Mr P not only appreciated an obvious and blatant risk, but also disregarded that risk.

I've considered this carefully. There is an argument that Mr P should have recognised a risk of somebody observing him enter his PIN. But Mr P hasn't said this is what happened, only that it's a possibility after considering the wider circumstances surrounding this complaint. But, even if this is what happened, I'm not persuaded Mr P acted with the very significant degree of carelessness that would be considered gross negligence.

So, after considering all the available evidence for this complaint, I'm not persuaded that Mr P authorised the disputed transactions. He's reported the theft of items from his office to the Police, and has provided us with evidence of replacing items that were stolen. And, there is a plausible explanation as to how an unauthorised individual was able to correctly enter Mr P's PIN when making the transactions. So, in line with the PSR's, and because I'm not persuaded that M P acted with 'gross negligence,' HSBC should refund the transactions to H.

### **Putting things right**

In order to fairly resolve this complaint, HSBC should:

- Refund the disputed transactions to H.
- Pay 8% simple interest per annum on this amount, from the date of the loss until the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint and direct HSBC UK Bank Plc to settle it as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask H to accept or reject my decision before 28 February 2025.

Lorna Wall  
**Ombudsman**