

The complaint

Miss H has complained HSBC UK Bank plc is holding her liable for an overdraft taken out on her business account.

What happened

Miss H opened a business account with HSBC in July 2023. She made a number of small transactions over the first month of holding the account. There was then no activity within the account for two months. Numerous transactions with credits received and payments made followed. An overdraft was applied for. Firstly, this was for £15,000. This was increased to £25,000 and then £30,000 on the day of application in October 2023. All these funds were then spent.

Miss H told HSBC she'd not used her account since July and had been a victim of fraud. HSBC continued to believe this didn't mirror the evidence they held showing her use or likely knowledge of what had happened.

Miss H brought her complaint to the ombudsman service.

Our investigator felt HSBC's evidence was convincing and showed that either Miss H had made these transactions herself or had known that a third party was using her account. She wasn't going to ask HSBC to do anything further.

Upset with this outcome, Miss H has asked an ombudsman to consider her complaint.

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've reached the same conclusion as our outcome. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

HSBC has asked Miss H to repay the outstanding debit balance of more than £28,600 on her business account. This balance was funded by the overdraft applied for in October 2023. Miss H says she didn't apply for this. In accordance with consumer credit legislation, I can consider whether Miss H should remain liable for this even if she didn't apply for this herself.

There are different regulations which are relevant to Miss H's complaint: so in addition, the Payment Services Regulations 2017 (PSRs) also apply. These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments

themselves. I've reviewed whether Miss H made or allowed to be made – therefore providing a third party with authority to make – the transactions which took place from 27 September to 31 October 2023.

To help me come to a decision, I've reviewed the evidence HSBC provided as well as what Miss H has told us.

When Miss H applied for her business account, she stated that she was operating a marketing business to support various social media ventures. Subsequently Miss H has said her proposed business was baking but she didn't pursue this for many reasons. I've not received any explanation for the different reasons Miss H has provided.

I can see the history of Miss H's use of her business account which she doesn't dispute. During the period of this use in July 2023, I can see there were two different mobile devices used. There are also payments made to specific individuals.

When reviewing the payments that are then disputed from 27 September onwards one of Miss H's devices remained in use for making transactions. I can also see payments being made to two of the same individuals that Miss H had sent money to previously. The use of a matching mobile device and known beneficiaries receiving credits when Miss H says she was not using her account suggests clearly that any use being made of Miss H's account was likely to be with her knowledge and authority.

I know during the period when the disputed payments were being made, £1,420 was sent to one of Miss H's own savings accounts with another bank. Although these payments were returned by Miss H's other account-holding bank to HSBC, Miss H has been unable to explain why – if a third party had taken use of her account – any payments would be made to her at all.

The evidence does indicate that Miss H was aware of the use of her account and more than likely authorised this. I believe the payments she received were her share of potential fraudulent activity.

I've noted Miss H's submission dated 9 December 2024 in support of her argument that she didn't authorise any use of her business account. I'm particularly sympathetic to her argument that HSBC didn't notice any of the disputed and unusual payment activity. It's certainly the case that this business account lay dormant for more than two months before there was considerable activity along with maximum use of an available overdraft facility. HSBC didn't pick this up themselves which concerns me.

However, I don't believe this changes my overall outcome that she more than likely authorised transactions and an overdraft application being made on her business account. I appreciate Miss H is now left with a considerable debt which HSBC will expect her to repay.

I won't be asking HSBC to do anything further.

My final decision

For the reasons given, my final decision is not to uphold Miss H's complaint against HSBC UK Bank plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss H to accept or reject my decision before 7 April 2025.

Sandra Quinn
Ombudsman