

The complaint

Mr E complained because HSBC UK Bank Plc refused to refund him for cash machine withdrawals which he said he didn't authorise.

What happened

Between 24 May 2024 and 3 June, there were multiple cash withdrawals from Mr E's HSBC account. There were 18 £250 withdrawals and one £500 withdrawal, making a total of £5,000.

On 3 June, Mr E contacted HSBC, and reported that he hadn't authorised any of these cash withdrawals. When HSBC asked him about the circumstances, Mr E said he had never used his card or PIN, and he kept both the card, and the unopened letter from HSBC telling him what his PIN was, together in a drawer in his living room. He also told HSBC that two days before the first disputed withdrawal, he'd had a party at his home to celebrate a relative's birthday.

HSBC refused to refund Mr E for the disputed withdrawals. In its letter of 4 June, it said this was because Mr E had kept his card and PIN together. It said the terms and conditions of the account clearly indicated that he was responsible for keeping these safe. That included securely destroying a PIN notification letter, and never writing down or recording the PIN. So HSBC said Mr E was responsible for the withdrawals.

Mr E complained, but HSBC's final response letter on 20 June confirmed the same answer.

Mr E wasn't satisfied and contacted this service. He said that the only other people who knew the card and PIN were kept in the living room were his wife and two very small children. He said the younger child would sometimes open the drawer where they kept letters, but he didn't really think anything was being exposed because it was just them in the house. Mr E said he hadn't written down his PIN, and he couldn't have destroyed the letter because he'd never used them.

Our investigator didn't uphold Mr E's complaint. She said that Mr E had been grossly negligent by keeping his card and PIN together in a living room drawer that was easily accessible when he had a party at his home. So HSBC didn't have to refund him.

Mr E didn't agree. He said he considered the place where the card and PIN were kept to be secure. They were in a drawer in his living room, not in a public place. He said he kept his other important documents, like passport, in the same drawer and in two years hadn't had a problem. He said the living room had always been a private space for the family, although he now had a young child who roamed about and moved things, and who was likely to be the one who had exposed the card and PIN during the party for Mr E's relative. Mr E said it wasn't something he thought could happen.

Mr E also said that HSBC should have noticed the unusual transactions, possibly confirming with him whether he'd made them. He said he'd never used the card or PIN, which should

have triggered concerns by HSBC when they'd suddenly been used for such a lot of withdrawals.

The investigator replied that she'd considered whether HSBC should have flagged the transactions. But she said that the card and PIN had been issued to Mr E, and they were what had been used to make the transactions. So she didn't think HSBC should have flagged them.

Mr E replied that he hadn't been negligent with how his card and PIN had been kept. They'd been unused in the drawer for two years. He said that maybe he could have thought outside the box, but it never crossed his mind when guests were coming to celebrate the relative's birthday, and weren't expected to pounce on any vulnerability in the house. He also said that he didn't believe HSBC could be excused from its core responsibilities of protecting the customer's money. The cash withdrawals weren't the sort of transactions he did, so it could have sent him a text or phoned him to check. So he believed HSBC had also been negligent. He said the truth is that mistakes happen and he asked for fair consideration not to be handed a penalty.

Mr E asked for an ombudsman's decision.

My provisional findings

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

What the Regulations say

In my provisional decision, I explained that 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.

The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed "*gross negligence*."

The regulations don't define "gross negligence", but there has been advice from the regulator, the Financial Conduct Authority (FCA), and there have also been legal cases. The relevant standard is a higher standard than the common law standard of negligence. The FCA say it has to be "a very significant level" and in a key legal case, the judge said it had to be serious disregard of risk.

What this means for Mr E's complaint

Mr E has been open about the fact that he kept his card, and the unopened PIN letter, together in a drawer in his house. In the provisional decision, I said I understood why Mr E felt that things in his home would be secure. And it's sad that it seems most likely that the person who carried out the cash withdrawal was a guest at the special birthday party which Mr E held for his relative. So I could understand why Mr E is upset.

But the fact is that leaving his card and PIN accessible in an unlocked drawer wasn't a sensible or reasonable thing to do, when expecting a large number of people.

And the terms and conditions of Mr E's HSBC account, to which he'd had to agree when opening the account, make it very clear that customers have a responsibility to keep their accounts secure. The terms and conditions say:

" We'll do all we reasonably can to keep your account secure. You must also help us to do this. This includes keeping your details safe..."

- *Keep your security details and payment device safe.*
- *Safely destroy any security details we send you, for example, if we send you a letter confirming your PIN. "*

Mr E didn't memorise the PIN and then destroy the PIN letter, as he should have done. I considered whether Mr E's action, which he acknowledges as a mistake, meets the legal test for "*gross negligence*." If he'd just left the card and PIN in the drawer at home without the circumstances of the party, I'd have thought it might count as negligence, but not gross negligence. The party with lots of people coming, and the drawer being unlocked, however, is a different situation. In the provisional decision, I explained that unfortunately I thought that leaving card and PIN together in an open drawer during a party, did count as "*serious disregard of risk*", so I thought this was gross negligence.

Should HSBC have stopped the cash withdrawals?

I considered whether HSBC should have stopped the cash withdrawals. I'd found that Mr E was grossly negligent about keeping his card and PIN secure. But HSBC still should have taken security precautions to block transactions which might reasonably have been considered potentially fraudulent.

I looked at Mr E's statements, and I couldn't see any other cash withdrawals, even going back to December 2022. As Mr E said, there are credits, and bank transfers out, but no cash withdrawals. There were however other transactions on the account that meant the amounts weren't unusual. Sometimes people need cash for something and take up to the daily limit for a few days.

There's a balance between a bank's responsibilities to carry out transactions which a customer has authorised, and its responsibilities to try to prevent fraudulent payments. So I wouldn't, for instance, have expected HSBC to have prevented all cash withdrawals. On the other hand, the activity that took place was definitely odd, so I thought HSBC should at some point have blocked the account and contacted Mr E to check. So I considered at what point it would be reasonable to expect HSBC to have put a temporary block on the account and contacted Mr E to check.

There were cash withdrawals daily from 24 May onwards. I think that it would be reasonable to expect HSBC to have prevented further cash withdrawals after the first three days, ie to trigger a block on 27 May. Repeated withdrawals, as happened here, are often a sign of fraud as fraudsters try to maximise their gain. So after the first three days, when £1,500 had been withdrawn, I thought HSBC should have blocked the account and checked with Mr E. If it had done so, Mr E could have told them the withdrawals were fraudulent, and the rest would have been prevented.

I went on to consider what the law says about contributory negligence, as well as what's fair and reasonable in the circumstances of this complaint. For the reasons I have already covered above, I thought it would be fair for Mr E to share responsibility for his loss with

HSBC from this point. HSBC was the expert here and could have prevented Mr E's loss from this point.

So I considered HSBC should refund Mr E 50% of the 13 cash withdrawals from 27 May inclusive. These came to £3,500 making a refund of £1,750. It should also pay him interest at 8%, from the dates of withdrawals to the date of settlement.

Responses to my provisional decision

Mr E said he considered my provisional decision to be fair, and he accepted it.

HSBC said it couldn't agree with everything I'd said. However, to avoid further protracting this matter for its customer, purely as a gesture of goodwill and with no admission of liability, it would agree to the provisional 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 reconsidered, and in the light of the responses, I consider the provisional decision was fair and reasonable in all the circumstances of this complaint.

My final decision

My final decision is that I uphold this complaint in part. I order HSBC UK Bank Plc to:

- reimburse Mr E for 50% of the fraudulent cash withdrawals between 27 May and 3 June inclusive. These came to £3,500 making a refund of £1,750;
- pay him interest on these amounts at 8% from the dates of withdrawals to the date of settlement.
- If HSBC deducts tax from the interest on the award, it should provide Mr E with a tax deduction certificate to show how much it has deducted, in order to allow Mr E to reclaim the tax from HMRC if appropriate to his personal circumstances.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 13 February 2025.

Belinda Knight
Ombudsman