

## **The complaint**

D Ltd, represented by Mr W, complained because HSBC UK Bank Plc refused to refund it for payments which Mr W said he hadn't authorised.

## **What happened**

On 11 June 2024, Mr W rang HSBC. He said there were 8 debit card transactions on his D Ltd business account which he hadn't made. These had taken place in the early hours of 7 June and totalled £25,090. They were made using D Ltd's genuine debit card and correct PIN.

Mr W told HSBC that he'd been out that evening, and his last genuine transaction before the disputed payments had been for £1,100 to a club at 1.33am on 7 June. He said he hadn't shared his card details, or told anyone his PIN or written it down. He also confirmed he had his card after the disputed transactions and had made two undisputed transactions on 10 June. He said he hadn't received any suspicious calls or texts, didn't suspect anyone who might have done it. He said he suspected his card might have been compromised when he'd made the £1,100 payment to the club.

HSBC refused to refund D Ltd. It wrote on 10 July saying this was based on the information from its enquiries. This included Mr W having said that the card was in his possession after the disputed transactions, and he hadn't disclosed his PIN to a third party. It told him that D Ltd's genuine card had been used and the correct PIN. It said HSBC wasn't responsible for identifying who had made the payments, just where liability rested based on how the transactions had occurred.

Mr W complained. HSBC issued its final response letter on 14 August. It said its fraud team had reviewed the information Mr W had provided, and had decided HSBC wasn't liable. Its decision remained the same as in its 10 July letter.

D Ltd, represented by Mr W, wasn't satisfied and contacted this service.

Our investigator didn't uphold D Ltd's complaint. She explained that the regulations say the customer is liable for authorised transactions and the bank for unauthorised ones. Mr W had told her that the genuine card wasn't in his possession at the time of the transactions, but was later given back to him.

The investigator saw that there had been access to D Ltd's mobile banking just two minutes before the first disputed payment, and said it was reasonable to infer that whoever had Mr W's phone and card also had access to mobile banking. But no transfers had been made using D Ltd's mobile banking. She also saw that there had been multiple logins between the disputed transactions and Mr W contacting HSBC. And there had been seven genuine business transfers between the disputed transactions and Mr W contacting HSBC.

The investigator also thought it was very unlikely that an opportunistic thief would have returned Mr D's phone and card after taking over £25,000. She said if Mr W had been tricked

into making the transactions, he should contact HSBC. But she considered it likely that Mr W had authorised the disputed transactions himself.

Mr W didn't agree. He said that:

- He hadn't authorised the payments and hadn't used the suppliers before. He had no receipts for the services. He asked what proof we have that he'd authorised the payments;
- He said he wasn't sure if his card had been cloned and the card had been taken and details stolen;
- He found it hard to believe the transactions weren't suspicious. They'd been taken within a short period, to companies he hadn't heard of. They were large amounts and D Ltd had never dealt with the companies and had no correspondence with them;
- He said the 7 June transactions had been debited to his account on 10 June and he'd reported them as soon as he could. He said with mobile banking he was always logging in and out to check payments and money received;
- He believed the payments had been taken by professionals who most likely did this regularly, and said the transactions had been taken without his permission.

D Ltd, represented by Mr W, 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.

#### *What the Regulations say*

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.

#### *Who is most likely to have authorised the disputed transactions?*

Mr W has asked what proof we have that he authorised the disputed payments. But that isn't how it works. This service takes its decisions on what is more likely than not to have happened, taking into account all the relevant available evidence. If it's more likely than not that Mr W, for D Ltd, authorised the disputed transactions, HSBC doesn't have to refund D Ltd, and vice versa. So I've looked at what the available evidence says.

The technical computer evidence shows that the disputed payments were made using D Ltd's genuine card, with the unique chip embedded into it. Mr W suggested that the card might have been cloned when he used it to pay a club at 1.33am that morning. But I find it unlikely in this situation. It's not generally thought possible to copy the chip on a card, and our service hasn't come across any cases where we felt this was a likely explanation of what happened. I haven't seen any evidence D Ltd's card was cloned. The transactions were made using D Ltd's genuine card. This was the same one Mr W was using for genuine payments around the same time.

Mr W hasn't been consistent about whether his card was stolen. He initially told HSBC he had his card throughout, and Mr W did make genuine transactions after the disputed ones. But he told our investigator that the card wasn't in his possession at the time of the transactions but was later given back. I find this unlikely. I can't see why a thief would have given D Ltd's card back to Mr W after making the £25,090 transactions. There was still a significant balance in the account.

Even if the card had been stolen, Mr W told HSBC he hadn't written down or told anyone his PIN - and his PIN was used.

I've also seen evidence that HSBC's systems triggered an alert for one of the transactions, meaning that a text was sent to Mr W's registered mobile, asking if he'd authorised it. The text was replied to with "yes." So HSBC allowed the payment to go through. Mr W hasn't said that his mobile was stolen, and I consider it's likely it was Mr W who confirmed this transaction as genuine.

As the investigator pointed out, there was a mobile login shortly before the first disputed transaction. Anyone with access to D Ltd's mobile banking would also have been likely to have taken more money, using transfers. This didn't happen.

Finally, I'm not persuaded by Mr W's comments that D Ltd hadn't dealt with the companies before, and had no correspondence or receipts from the recipient organisations. What decides the outcome here is whether it's more likely than not that Mr W, for D Ltd, authorised the disputed transactions on 7 June. It's not relevant to that decision whether or not the providers of the services used on 7 June gave receipts, or whether D Ltd or Mr W had used them before.

Taking all these factors into account, I consider it's more likely than not that Mr W, for D Ltd, authorised the disputed transactions himself. This means that HSBC doesn't have to refund him.

### **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 D Ltd to accept or reject my decision before 30 May 2025.

Belinda Knight  
**Ombudsman**