DRN-5362342

Financial Ombudsman Service

The complaint

Mr C complains that HSBC UK Bank PLC ("HSBC") failed to refund transactions he didn't recognise.

What happened

Between October 2021 and September 2022 Mr C was in prison and was unable to use his account. He's said that he secured his card at his home and kept a note of his PIN in a secure place.

He explained that he spoke with HSBC on several occasions during his sentence and when he was released, he found that over £9,000 had been taken from his account. Mr C said his ex-partner was responsible and she didn't have access to his card or permission to use the account.

The account was used to make domestic purchases, cash withdrawals and numerous online gambling transactions. Mr C wanted HSBC to refund him. He argued that no one else had authority to use his card and HSBC should've protected his account because they knew he was in prison.

Mr C said that because he was in prison, he was unable to monitor his finances and only saw the losses once he was released.

Mr C confirmed to HSBC that he'd reported the loss to the police. After reviewing the situation, HSBC declined to refund Mr C, believing he'd breached the terms of his account in respect of the security of his card and the retention of the PIN advice. They also told Mr C that the online gambling transactions were carried out under his own name, so they advised him to contact the merchants directly.

Mr C complained and the situation was reviewed, but HSBC didn't change their position, so Mr C brought his complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the circumstances and asked both parties for information.

Mr C reiterated his version of events and confirmed his ex-partner didn't have permission to use his card. He said she'd also entered his home without permission to take the card and find the PIN. Mr C believed his ex-partner had used his details to set up the online accounts.

HSBC provided details of their records and investigation, including copies of calls held with Mr C and information provided by one of the gambling merchants.

In summary the response from the gambling merchant showed significant activity had taken place with many thousands of pounds spent and received in winnings. The data also showed that several other accounts in Mr C's name were recorded going back several years.

Copies of calls indicated Mr C knew about cash withdrawals, cheque payments and referred to transactions made for various items whilst he was serving his sentence.

After reviewing the evidence, the investigator didn't think that HSBC had acted unfairly. It was commented that Mr C's arrangements had breached the bank's terms for securing his card, which in turn was also in contravention of the Payment Service Regulations 2017.

Further, references to calls were made, including the receipt of a cheque and a query about not being able to get a statement form an automated teller machine (ATM).

The investigator believed Mr C had provided authority to a known third party to use his account and didn't uphold the complaint.

Mr C disagreed and argued that HSBC had acted unfairly. He said the issue isn't about the use of his card and personal identification number (PIN), but the online gambling.

Mr C said he didn't gamble, and the accounts were set up in his name by his ex-partner.

Mr C said he needed to record his PIN due to certain medical conditions and HSBC should've blocked his card because they knew he was in prison.

Mr C said his ex-partner admitted in a call that she'd spent his money. He was attempting to obtain a copy of the call.

As no agreement could be reached, the complaint has now been passed to me for a 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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that HSBC can hold Mr C liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them, but HSBC cannot say that the use of the card and PIN or the use of the card for online payments conclusively proves that the payments were authorised.

Unless HSBC can show that consent has been given, it has no authority to make the payment or to debit Mr C's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr C.

It's not my role to say exactly what happened, but to decide whether HSBC can reasonably hold Mr C liable for these transactions or not. In doing so, I'll be considering what is most likely on a balance of probabilities.

Mr C's complaint is that someone (his ex-partner) used his card and PIN to make numerous unauthorised transactions whilst he was in prison. Mr C denies providing any authority for his account to be used by anyone else.

Clearly, Mr C himself couldn't physically use his card because he'd secured it at home whilst serving his sentence. But, if arrangements were put in place that made it appear as though the card user had Mr C's authority – they would be using that card under a principle called "apparent authority".

This was briefly referred to in the investigator's report although I think it's the single most relevant factor here. When reviewing the calls made by Mr C, it's apparent that he knew about the card's use at various ATM's during the time he was in prison. This is counter to his version of events that no one else had permission to use his card.

Mr C talked about being unable to get a statement from the ATM and had told the call handler he'd attempted it at several other ATMs. As Mr C was in prison at the time, it's reasonable to assume the card was being used by someone else with his permission to do so. Otherwise, he wouldn't be aware of issues at the ATMs. His statements also show the card was used at various outlets that day to make purchases using the actual card.

Additionally, Mr C, in another conversation shortly after leaving prison asked an HSBC call handler about two transactions he says he made using the card and PIN. These were made whilst Mr C was still in prison. Again, he couldn't have carried out these transactions himself. So, from the evidence of the calls, it's reasonable to conclude that Mr C knew his card was being used with his permission.

Regarding the online gambling transactions, the evidence provided by the bank and the gambling merchant show considerable use of Mr C's account. The records also show multiple accounts using Mr C's own details. The accounts show considerable credits applied to it consisting of thousands of pounds. Whilst it's unlikely Mr C himself was using the account whilst he was in prison, the arrangement he appears to have put in place enabled these additional transactions to be made. When providing apparent authority – the account holder would be liable for the use of the account , even if payments were made that were unknown to the account holder. Essentially if permission is given – which I'm satisfied it was here, then Mr C will be liable for the use of the card until he removes that authority.

Whilst Mr C did speak with HSBC about his account during his time in prison, he didn't question the use of the account or ask HSBC to take any particular action. I don't think Mr C's assertion that HSBC acted unfairly because they didn't stop his card is supported by the evidence. HSBC wouldn't know Mr C's personal arrangement unless he specifically asked them to do something such as block the card whilst he was in prison.

I've also noted that Mr C's ex-partner made numerous payments into Mr C's account during the time he was in prison and Mr C made a bank transfer back to her shortly after leaving prison. This arrangement doesn't appear as though they were leading separate lives. What it shows is that both Mr C and his ex-partner were moving funds into and out of the account and she had use of the account which Mr C knew about.

I don't think that Mr C's arguments are supported by the evidence, the calls show he had knowledge about the accounts usage whilst in prison and even if he wasn't aware that the gambling transactions were being made, I'm afraid he's still liable for them.

So, on balance I think it's more likely than not that Mr C gave permission for the card to be used, providing his authority for the payments to be made and it was both fair and reasonable that HSBC held him liable for them.

Given I've made a finding about authorisation, I haven't gone on to consider the issues mentioned about security arrangements of the card and PIN as they're no longer relevant.

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 Mr C to accept or reject my decision before 27 June 2025.

David Perry
Ombudsman