DRN-5783475

The complaint

Mr B complained because HSBC UK Bank Plc refused to refund him for transactions totalling £9,169.25, which he said he didn't authorise.

What happened

On 27 July 2024, Mr B rang HSBC. He said he'd lost his credit card when he was in a bar abroad on holiday. He asked what his balance was, and repeatedly asked whether there were any large transactions. HSBC said that the credit card showed £10.14 at 5pm the previous day. Mr B said that was fraudulent, having mis-heard it as ten thousand. The adviser corrected him, and said there was another for £507.12 and one for £1,690.14, then some which hadn't gone through. Mr B said that both of these were fraudulent. The adviser asked if Mr B had gone to the club alone or with someone. Mr B said he was alone, then said he was with a group for most of the night, so there might be transactions which were his, but anything big wouldn't be his.

HSBC's adviser told Mr B that the two disputed transactions for £1,690.14 and £507.12 had been chip and PIN transactions. He asked where Mr B kept his card, and Mr B said in his wallet, which he still had. The adviser asked if anyone else had access to the card or card details. Mr B hesitated then said not that he knew of. He said he'd bought some drinks so someone might have seen him enter the PIN. Asked about the PIN, Mr B first said he kept it in his head. The adviser asked if he'd retained the PIN advice, and Mr B said yes, he'd written down his PIN on a piece of paper. The adviser checked that and Mr B confirmed it. The adviser asked whether the paper was missing too, and Mr B said he usually kept it in his wallet.

Mr B said he was buying some drinks at the bar earlier in the night, and was concerned someone might have seen him enter his PIN, because his card then went missing. He said he usually had the small note with his PIN in his wallet, and that had gone missing too.

Mr B said he was also concerned about his debit card, which was also missing. The adviser asked if that PIN was written down, and Mr B said he used the same PIN for the credit and debit card, which was written down on the small note he'd mentioned. It later transpired there were disputed transactions on both cards, and the total in dispute was £9,165.25.

HSBC stopped the cards, and asked for a police crime number. The adviser said that Mr B had his PIN written down, and Mr B confirmed again. Mr B added that he still had in his possession two other cards with other financial organisations, which had also been in the wallet. Mr B said he would go to the police and obtain the crime number. He provided this two days later.

On 7 August HSBC wrote to Mr B. It said it had investigated, and couldn't support his claim for a refund. It said it was clear that Mr B's card had been used to make the transactions. The overriding reason for the decision was that Mr B had confirmed he had recorded his PIN and kept it with the card. HSBC's terms and conditions clearly indicated that Mr B was responsible for keeping his card and PIN safe. That included destroying any PIN advice and never writing down or recording the PIN in a way that could be understood by someone else. HSBC reversed the temporary refunds it had given Mr B.

Mr B complained. He sent a letter dated 19 August, in which he said he wanted to ''*clarify a significant miscommunication*.'' He said the piece of paper which he'd mentioned contained details of his National Insurance number, email address, bike lock code, IMEI number of his phone, an insurance number and his tax reference. He said that at no point was his HSBC PIN written down on this. He said that on the phone call, he'd mentioned that the PIN might have been on this paper, but this wasn't the case and his PIN hadn't been compromised in this way. He said he'd been in an understandably heightened state of distress after finding his phone and wallet had been stolen and significant amounts of money had been withdrawn from his HSBC account. He said he'd been in a tourist location abroad known for targeting tourists, and he believed his PIN had been compromised as he'd been observed by individuals who then stole his wallet and phone. He also said the transactions were out of character, and that HSBC had subsequently blocked a later transaction at the same club. He also said that a week after the disputed transactions, he'd had a suspect phone call.

HSBC sent Mr B its final response to his complaint on 6 September. It said that Mr B originally advised he'd written down his PIN on a piece of paper kept in his wallet, which was later stolen and used to commit the fraudulent transactions. HSBC had held Mr B liable due to negligence in protecting his PIN as set out in the terms and conditions of his account.

HSBC noted that in Mr B's appeal, he'd said he had found the piece of paper and it hadn't in fact been taken, and also it hadn't contained his card PIN. HSBC said it couldn't see how the PIN was otherwise compromised without Mr B being negligent.

Mr B wasn't satisfied and he used solicitors to complain to this service. His solicitors said that Mr B had discovered the piece of paper in his backpack, a few days after getting home. They also said that while the piece of paper contained key information, it didn't include his PIN. So even if it had been stolen, it wouldn't have given the thieves access to his account. Mr B's representative added that when Mr B had phoned HSBC, he had been scrambling to figure out and be helpful to the investigation about how the cards could have been compromised. His representative said that HSBC was leveraging a communication mistake, at a time which was high pressure and distressing for Mr B. He said that Mr B had been under an immense amount of stress and concern as he was challenged with the reality that he'd lost a significant amount of money in a short period of time, when he rarely spent more than £300 in one day.

Our investigator upheld Mr B's complaint. He said that Mr B had said that his HSBC credit and debit cards had the same PIN, so any fraudster with this information could make transactions on both cards. He said that Mr B had made a withdrawal before the cards were stolen, which had been done using chip and PIN, which gave an opportunity for the thief to find out the PIN. There had also been declined transactions with decreasing amounts, which might have been a fraudster trying to maximise their gain. The investigator said that if this had been Mr B, he'd have expected he'd have contacted HSBC to ask why they were declined.

The investigator also said that Mr B had told him that the piece of paper also contained other pieces of important information, and he'd been confused as it was a stressful situation. Mr B had also said that he'd later found the paper in his own possession. Mr B had also provided evidence to show that he'd bought a new phone several days later, which supported his evidence that his phone had also been stolen.

HSBC didn't agree. It pointed out that the evidence showed there hadn't been any chip and PIN transaction for at least 30 hours before the first disputed transaction, so it was unlikely that a fraudster had obtained Mr B's PIN by shoulder-surfing. There had also been a gap of some hours between some of the disputed transactions on the evening of 26 July and the early hours of the morning on 27 July. It wasn't likely that a fraudster would leave such a gap, because they'd try to maximise their gain as soon as possible. It said that if Mr B's wallet was stolen, it was most likely that the PIN had been written down in his wallet, making it easy for the thief to use the card and PIN.

HSBC 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.

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.''*

I saw the technical computer information which showed that each disputed transaction was carried out using Mr B's genuine card, and his correct PIN. There were no transactions which failed because of an incorrect PIN. There are 10,000 possible combinations of a four digit number, so it's not possible that any third party could have guessed the PIN. So whoever made the transactions knew the correct PIN.

I listened in detail to the phone call recording where Mr B reported the disputed transactions to HSBC. I've set out key points from that call above. The call recording showed that although Mr B initially answered ''in my head'' when HSBC asked where he kept his PIN, he changed that very soon afterwards in the same conversation. He then specifically told HSBC at multiple points in that long call that yes, he'd written down his PIN on a piece of paper which he kept in his wallet with the HSBC debit and credit cards. There was nothing in the phone call recording which I consider might have led HSBC to conclude that Mr B was incapable of accurately reporting what had happened – for example he didn't say he was unwell, or had any special requirements. Nor did he sound overtly distressed, and I consider there was no reason for HSBC to conclude during the call that he was unable to give a truthful account of the circumstances.

It wasn't until HSBC refused to refund Mr B that his evidence changed. He then said that he hadn't written down his PIN, and he listed multiple other pieces of information which he said were on what he had told HSBC was ''a small piece of paper.'' Mr B also changed his evidence about whether the wallet containing the cards had been stolen. In his initial phone call to HSBC, he said he still had his wallet. He also said he still had two cards from other named financial organisations.

Mr B's evidence then changed again when he contacted this service. At that point his representatives said that the piece of paper had been on his person, so couldn't have been stolen. And in reply to questions from our investigator, his representative said that he discovered he still had the piece of paper when going through his backpack a few days after getting back to the UK from his holiday.

Mr B's representative didn't say when Mr B discovered he still had the paper which he'd clearly told HSBC had been stolen, just that it was ''a few days'' after his return. But Mr B's HSBC statements show that there were UK-based transactions on his credit card from 2 August. So it's very surprising that if Mr B discovered any such piece of paper around, say, 5 August, he didn't tell HSBC about that until his 19 August complaint about HSBC's refusal to refund him.

The multiple changes of evidence, combined with multiple very clear call recording statements that he'd written down his PIN and the paper had been taken, meant that I wasn't persuaded by Mr B's changed evidence. I considered that what he said multiple times on the call recording was much more likely to have been the accurate version of what really happened.

I also looked at the detail of the transactions. Mr B told HSBC that he'd bought drinks and someone might have seen him enter his PIN. But there aren't any records of genuine chip and PIN transactions that night on Mr B's HSBC card. There were two contactless payments on 25 and 26 July, but contactless payments wouldn't have enabled someone to learn Mr B's PIN by ''shoulder surfing'' him.

I had to consider the possibility that Mr B made the transactions himself. For example, the call recording shows that Mr B told HSBC that he still had his wallet and the two other cards from other financial organisations. It seemed unlikely that any fraudster would have taken just Mr B's HSBC credit and debit cards and the paper note of his PIN – and left two other cards from which a fraudster might have stolen money too.

I also bore in mind that Mr B's evidence changed significantly during the course of his complaint. For example, he initially gave very clear evidence to HSBC that he'd written down his PIN and kept it with the cards. He said this on several occasions during the call, not just once. He then changed this when HSBC refused to refund him, and when his solicitor represented him in his complaint to this service.

Mr B also changed his evidence about his wallet. He initially said he still had his wallet and his two cards with other financial organisations. He later changed this to say the wallet had been stolen. He hasn't told us about any frauds on the other two cards, and it seems unlikely a fraudster would just steal from the HSBC cards and not from the other two cards.

I thought it was much more likely that Mr B's first evidence to HSBC was likely to be the most accurate. I wasn't persuaded that the stress of the loss caused him to give such very different accounts of what happened. The multiple changes to his evidence make his evidence much less credible.

Taking all these things into account, I considered it was most likely that Mr B carried out the disputed transactions himself.

I also considered liability if Mr B's HSBC cards, and his piece of paper with PIN written on it, were indeed stolen. I considered whether writing down the PIN counts as Mr B acting with gross negligence. I found that it does. HSBC's Terms and Conditions specifically state:
''*Preventing misuse of your accounts'':*
Do:
Keep your security details and payment device safe.
…

Don't:
Tell anyone your security details
Choose security details that can be easily guessed by anyone else
Write own your security details in a way that other people would easily understand. ''

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 says it has to be ''a very significant level.'' I found that writing down and keeping the PIN with the cards was gross negligence.

So I considered it was most likely that Mr B authorised the disputed transactions himself. If he didn't, and a thief stole his HSBC cards and the piece of paper on which Mr B had written down the PIN used for both cards, I found that Mr B acted with gross negligence in writing down the PIN and keeping it with his cards.

Finally, Mr B's representative had argued that the disputed transactions were out of character and HSBC should have intervened. This was debatable. They were authorised using the genuine card with its unique chip, and the correct PIN which the customer was under an obligation to keep secure. Mr B had a high credit limit, and was on holiday where spend is typically higher, and the amounts spent brought the balance to nowhere near his credit limit. There was also a gap of some hours between the early and later disputed transactions, which is just not the pattern of transactions which a fraudster would use. Fraudsters carry out transactions quickly, to maximise their gain before the customer can find out and block the card.

There's a balance to be struck between identifying payments that could potentially be fraudulent – and then responding appropriately to any concerns – and ensuring minimal disruption to legitimate payments. Banks can't reasonably be involved in every transaction. But I accepted that the £5,070.18 payment was significantly higher than Mr B's usual spend if we exclude payments to other financial organisations (for example a £10,000 payment on 8 April and a £15,000 payment on 4 August).

So I considered that it was likely that HSBC should have intervened to check whether Mr B had made the £5,070,18 payment. But I then considered what was most likely to have happened if it had checked. I'd said that I considered it was most likely that Mr B completed the transactions himself, for the reasons above. So if HSBC had blocked the transaction, and checked with Mr B, I considered it most likely that Mr B would have allowed the transaction to go through.

It wasn't relevant whether Mr B bought another phone soon after the disputed transactions, nor that in later versions of his evidence he said he received suspect messages a week after the disputed transactions. What matters is who authorised the disputed transactions, and whether Mr B was grossly negligent in keeping a record of his PIN with his cards.

As I considered it was most likely that Mr B authorised the disputed transactions himself, my provisional decision was that I found that Mr B was liable for the disputed transactions. So HSBC doesn't have to refund him.

Responses to my provisional decision

HSBC said it had nothing to add.

Mr B, represented by solicitors, sent a detailed response. In summary, his solicitors said:

- They failed to see on what basis I'd concluded that Mr B had authorised the transactions, because they were wholly out of character;
- They said an unauthorised user could have seen Mr B using his card in a bar, earlier in his holiday, and then used it later;
- They didn't believe Mr B had tried to spend so much in a bar by himself, but if he had, he'd have tried to put the final declined transactions onto another card – which he hadn't;
- To suggest Mr B had been the person to use his card was effectively to accuse him of fraud, which shouldn't be embarked upon lightly or without significant evidence, which was wholly lacking;
- If Mr B's card was used without his authorisation, the solicitors didn't agree he'd been grossly negligent;
- It said HSBC should have done more to safeguard Mr B's funds. As HSBC had blocked the last large payments even though they'd been made by chip and PIN, HSBC should have intervened earlier.

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.

I have considered Mr B's solicitors' representations carefully. Having done so, I am not persuaded to change my provisional decision, for the following reasons.

- In my provisional decision, I set out in full the basis on which I'd concluded that it was more likely than not that Mr B authorised the disputed transactions. This included, among other factors, the use of the genuine cards and PIN, and Mr B's repeated changes of evidence. This isn't outweighed by whether or not Mr B may have previously spent large amounts in a club on holiday.

- I'm not persuaded by the argument that an unauthorised user could have seen Mr B using his card in a bar, earlier in his holiday. As I explained in my provisional decision, there were no records of earlier genuine chip and PIN transactions that night on Mr B's HSBC card. I find it very unlikely that any third party fraudster would have ''shoulder surfed'' Mr B entering his PIN somewhere else earlier in his holiday, then waited several days, following Mr B's movements throughout, until stealing his cards in the club and using their knowledge of his PIN.

- What happened in the club at the time of the declined transactions, after all the approved ones on Mr B's HSBC cards, isn't something that either I or Mr B's representatives can know in full. However, I note that Mr B had indeed used both his HSBC debit card and his HSBC credit card. It would also seem unlikely behaviour by thieves to steal Mr B's HSBC cards but not any other financial cards by which they might profit.

- The role of this service is not to make accusations of fraud as Mr B's solicitors claim has been done, but to reach a fair and reasonable decision about what it most likely to have happened. Here, multiple pieces of evidence suggest Mr B carried out the transactions himself, as set out above.

- I have found that it was most likely that Mr B's first evidence to HSBC was likely to be the most accurate. This was that he had written down his PIN on a piece of paper which he kept with his HSBC cards. I consider this constitutes gross negligence.

- For the reasons set out in my provisional decision, I consider HSBC should have intervened to check whether Mr B had made the £5,070.18 payment. But, as explained, if HSBC had blocked the transaction and checked with Mr B, I consider it’s most likely that Mr B would have allowed the transaction to go through.

So I find that my provisional decision was fair and reasonable in all the circumstances of this complaint. I find that it’s most likely that Mr B carried out the disputed transactions in the club abroad himself. Even if he didn’t, I consider he was grossly negligent. This is because I consider his first and repeated evidence to HSBC - that he’d written down his PIN on a piece of paper which he kept with his cards – was the most likely to be correct out of the different versions he provided over the course of this complaint. This means that HSBC doesn’t have to refund Mr B.

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 B to accept or reject my decision before 26 September 2025.

Belinda Knight
Ombudsman