

complaint

Mr F complains that HSBC Bank Plc has refused to refund disputed transactions on his bank account. Mr F says he is the victim of fraud and wants HSBC to refund the money.

background

Mr F contacted HSBC about his bank account. He was told about a number of transactions he says he did not make or authorise. The transactions were transfers – all to the same payee – made through telephone banking. Mr F complained to HSBC.

The bank rejected Mr F's complaint. It said the transfers could only have taken place if the person ringing the bank had information about Mr F's account and his security details. So, HSBC said Mr F was in breach of the terms and conditions of his account with the bank. And there was an earlier transfer to the same payee that Mr F had confirmed was genuine. Mr F was not happy with the bank's response so referred the matter to this service.

Our adjudicator did not recommend Mr F's complaint should be upheld. He did not consider that Mr F had been negligent with his security information – he believed Mr F had authorised someone else to make the transfers. There was no reasonable way that an unauthorised third party would have been able to get Mr F's account and security information.

Mr F had suggested his mobile phone may have been tampered with and somebody was able to listen to his calls. His phone had been overheating and the retailer had replaced it. The last time that Mr F made a transfer through telephone banking was 18 days before the first disputed one (Mr F indicated he did not confirm the first one was genuine as HSBC had said) – so it was highly unlikely that somebody would wait this long to use any information they did obtain.

The adjudicator noted that each of the disputed transfers took place shortly after a large amount of cash was deposited in Mr F's account. It was not clear how a fraudster would know when these funds were being paid in. And in two cases, a reasonably large balance was left in the account after a transfer. This was not the action expected of a fraudster.

Mr F did not agree with the adjudicator's view so the matter has been referred to an ombudsman for a final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same conclusion as the adjudicator.

I cannot say who carried out the disputed transfers. The key issue I have to consider is whether HSBC can hold Mr F responsible for them (under the terms and conditions of his account with the bank). I believe it can.

To be frank, I do not find Mr F's description of the circumstances of this complaint to be credible. There is little I can add to what the adjudicator has already said. I consider he set out the position clearly and thoroughly.

I have listened to the various telephone calls made to HSBC to make the transfers and when they are disputed. The caller authorising the transfers appears to be different to the one disputing them. But the person authorising them could only do so if they had details of Mr F's account and his security information.

I do not consider it plausible that somebody would tamper with Mr F's phone so that they could get his banking details – and then wait nearly three weeks before using them. And it is not clear to me how a fraudster would know when the large cash deposits were paid into Mr F's account (so the transfers out could be made).

I note that when first discussing his complaint with the adjudicator, Mr F was uncertain about the circumstances leading to him contacting HSBC. At first he said he was in a bank branch. Then he said he was using an ATM. But it was not clear why – he just found out the balance of his account was low. He was also not sure whether he had responded to a call from HSBC – the bank says it contacted him to confirm the first transfer was genuine. All this uncertainty does not help Mr F's credibility.

When I combine all of the above, I agree with the adjudicator and think it more likely that Mr F knew what was happening. If not, then – unlike the adjudicator – I would consider him to have been negligent with his account and security information. So, in any event, HSBC can hold him responsible for the transactions.

This may disappoint Mr F, but I do not believe I have any reason to direct HSBC to refund the disputed transactions.

my final decision

For the reasons I have given, my final decision is that I do not uphold Mr F's complaint.

Andrew Davies
ombudsman