

Complaint

Mr K complains HSBC UK Bank Plc failed to refund him a large sum of money he says was debited from his current account without his permission. He also says they unfairly closed his account during what was a very difficult time for him. He wants them to refund him the amount of money he lost and apologise.

Background

Mr K held a current account with HSBC. Between August and Sep 2015 several cheques totalling £20,100 were paid to third party accounts. Mr K says he didn't write these cheques or give anyone else his consent to write them on his behalf. He says he found out the money had left his account when HSBC rang him in mid-September 2015. They told him a cheque had been refused because there were insufficient funds in his account. He reported the transactions as fraud.

Mr K was arrested a few months later as part of a police investigation that involved the cheque payments. Following this HSBC took the decision to close his account in February 2016. This prevented him from receiving further income into the account, such as his salary.

Mr K was found not guilty of the charges against him in 2017. It's my understanding other defendants charged alongside him were found guilty of other charges. After the verdict, Mr K asked HSBC to refund the sums that left his account, but they refused. They said he'd been grossly negligent with his chequebook, and they shouldn't be responsible for the loss he'd suffered as a result.

Mr K thinks HSBC are obliged to refund him the transactions. He says he didn't authorise them and he's referred to information on the Financial Conduct Authority's website in support of this. He says he'd left his chequebook in a drawer in his bedroom at his permanent address; his family home. He thinks this is usual customer behaviour and doesn't amount to gross negligence. He says the person who had written the cheques was identified by the police and is now widely understood to be a fraudster. This person was previously known to his family and they must've stolen the cheques on visiting his family home.

Unhappy with HSBC's response Mr K brought his complaint to our service. The investigator who considered his complaint decided not to uphold it. They found:

- It was unlikely Mr K deposited the cheques himself, as information points to him being abroad for much of the time the transactions took place.
- Mr K wasn't grossly negligent by keeping a chequebook in a drawer in his bedroom in his family home. It was understandable he wouldn't have anticipated his chequebook would be stolen from a place he thought no-one else would access.
- Mr K is frustrated at HSBC's refusal to refund the transactions and that's understandable. But HSBC have a wide variety of legal and regulatory obligations they must meet. And when considering these in relation to what's happened, it wouldn't be a fair and reasonable outcome to recommend them to refund the transactions.
- HSBC were entitled to end its relationship with Mr K even after he'd been arrested. They'd closed his account immediately in line with his account's terms. While this

was certainly an inconvenience for Mr K, it didn't mean HSBC's decision was inappropriate.

Mr K disagrees with the investigator's findings. He asks what specific laws and regulations mean he can't get his money back. He contends how normal his actions were in keeping his chequebook in a drawer in his bedroom. And he thinks HSBC ought to have suspended his account while legal action was taken against him, rather than closing it.

Mr K has asked for a final decision by an ombudsman, so the complaint has been passed to me to decide.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I've decided not to uphold Mr K's complaint for broadly the same reasons as the investigator gave in their view.

Mr K has referred to information on the Financial Conduct Authority's website in correspondence he had with HSBC. This information relates to firm's responsibilities to customers under the Payment Services Regulations (PSRs). Broadly speaking the regulations require firms such as HSBC to refund customers for any transactions they didn't authorise. The regulations in certain circumstances do allow firms not to refund unauthorised transactions if they were the result of gross negligence.

I find, however, that the PSRs do not directly apply to Mr K's complaint as they specifically exclude payments by cheque. So, I've gone on to consider HSBC's responsibilities in relation to fraudulent cheques, as well as their wider legal and regulatory responsibilities when providing accounts.

It's generally understood a forged signature on a cheque doesn't represent an account owner's mandate to pay funds out of their account. So, I've considered whether Mr K did or didn't sign the cheques. I don't have the full particulars of the court's considerations when Mr K went to trial and I can't say for sure whether the court concluded he didn't sign the cheques. But based on the specificity of what he's told us, the fact he was found not guilty, and that he appears to have been abroad when some of the cheques were deposited, I find he most likely didn't sign the cheques.

HSBC say Mr K was grossly negligent for someone to have had access his chequebook. And they comment he failed to report the chequebook as stolen in 2015. But I don't find their conclusions persuasive. I don't find keeping a chequebook in a bedroom drawer amounts to serious carelessness.

When Mr K reported the cheque payments in 2015, he says he was temporarily renting elsewhere, so it's plausible he wouldn't have known his chequebook had been taken or have understood when it could've been taken. He may simply have been trying to piece together how cheques in his name could've been used without his knowledge.

When Mr K contacted HSBC again in 2017, he says the police had clearly identified who'd taken and deposited his cheques. It's reasonable then for him to have used the term "stolen" when referring to what had happened. So, I don't find him not reporting his chequebook as stolen in 2015 as telling or that he's been particularly inconsistent.

Mr K feels strongly he should receive the funds back that left his account. He was found not guilty at trial, meaning the court wasn't persuaded beyond a reasonable doubt that he was guilty of a crime. And although this isn't the evidential standard required of me when deciding this complaint, I recognise Mr K may have had no awareness of the cheques.

But other than HSBC's conclusion that Mr K was grossly negligent, I also have to consider their refusal to refund him in light of their wide legal and regulatory obligations, and any other concerns they may have. After doing so - and while I appreciate this will come as very disappointing news to Mr K - I don't find their decision not to refund him inappropriate. Should Mr K opt not to accept my final decision, he wouldn't be prevented from pursuing HSBC for the funds in court.

Mr K would like to know which specific laws and regulations mean he can't get his money back, which again is understandable. But HSBC aren't required to give any further reasons. Moreover, HSBC's obligations are broad and varied, and it isn't the case that one regulation or law only applies to the circumstances of Mr K and this complaint. Mr K may wish to research firms' obligations and responsibilities, and how they relate to his circumstances and the decision HSBC have taken. But from what I've seen, I'm satisfied HSBC have acted in accordance with what's required of them.

The account closure

Mr K thinks HSBC should've only suspended his account, rather than close it when he was charged by the police. But HSBC can decide not to continue its relationship with Mr K, in the same way he could've decided he no longer wanted to transact with them. Their decision is not something we would generally interfere with, as this would impinge on their freedom to decide who they want as a customer, including existing customers.

HSBC should, however, ensure that when they close accounts they apply the correct account terms. Considering Mr K had been arrested on suspicion of a crime, this certainly met several of the terms that permitted HSBC to close his account immediately. I understand that Mr K was eventually found not guilty, but the terms did not require HSBC to await a court's verdict before deciding to close his account. So, I'm not going to award any compensation for the inconvenience Mr K no doubt encountered because his account closed.

My final decision

For the reasons I've explained above, I've decided not to uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 28 March 2020.

Liam King
ombudsman