

Complaint

Mr A complains that HSBC UK Bank Plc debited his account with a series of card payments totalling £3,500 which he says he didn't make or otherwise authorise.

What happened

On 4 February 2018, an account was set up on a gambling website in Mr A's name, using his correct date of birth, address, mobile phone number, and email address.

Someone tried to pay £250 to the gambling website using Mr A's debit card, but it was declined as one of the card details was entered incorrectly. The correct card details were then used, and 5 transactions were made totalling £3,500. The money was used for online gambling, and £1,009.35 was returned to Mr A's bank account.

The next day, Mr A checked his balance at a cash machine and reported the transactions to HSBC, saying he didn't make them or create the online gambling account.

Mr A said he never lost his card or gave it to anyone, and no-one else had access to it. He didn't record his card details and had not received any calls or emails asking for the details. And he said he'd never told anyone his card details or given them permission to use it.

Mr A explained he'd met a man at work who recommended he make a bet. I'll call this man "Mr B". In January 2018, Mr A made an account with a *different* gambling website on Mr B's advice. Mr A paid £320 to the other gambling website and received £800 in credits. Mr A said Mr B never saw him enter his card details and there was no way he could've got them.

Mr A suspected Mr B had made the disputed transactions but said he didn't tell HSBC at first as he didn't want to get Mr B in trouble. Mr A stayed in contact with Mr B but wasn't able to get him to return the money he lost. He sent us a copy of their text messages.

HSBC argued they weren't liable for the transactions in dispute. They said they were made using Mr A's correct details and it was unlikely someone could have got all of Mr A's personal details and card details without him knowing. They pointed out there were no further attempts to use Mr A's card after it was cancelled, saying this indicated the person using the card knew when it was cancelled. And they said that since all winnings had to be paid back to Mr A's account, it meant a fraudster couldn't make money from doing this.

Mr A brought his complaint to our service. Our investigator didn't think HSBC had to refund the transactions. She said the text messages didn't make it look like Mr B was acting without Mr A's consent. And Mr B didn't seem to deny he owed Mr A money. She noted that Mr A had made other gambling transactions recently before the ones in dispute. And the ones in dispute still used his correct details. She pointed out that the gambling company emailed Mr A on 4 February 2018 but he didn't act on it at the time, and he didn't contact the company until 28 February 2018.

Our investigator didn't think Mr A made the payments himself, as she'd listened to a call between the gambling company and the person who set up the account, and it didn't sound like Mr A. But she said the evidence made it look like Mr A was aware there would be transactions on his card, and that he was trying to recover his losses with Mr B.

Mr A disagreed with our investigator. He said he had a lot of unread emails, and he might've thought the one from the gambling company was just a promotion. He reiterated that he wasn't aware of the transactions and would've never given his permission to bet so much money. He asked for his case to be looked at again, so the complaint's been passed to me to decide.

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.

Having done that, I've come to the same overall conclusions as our investigator, for much the same reasons. I'll explain why.

Broadly, HSBC can hold Mr A liable for the payments in dispute if the evidence suggests that it's most likely he made them himself or authorised someone else to make them – even if he didn't authorise them to make the transactions for those exact amounts.

I'm satisfied from the bank's technical evidence that the person making the payments used Mr A's correct card details, aside from the first declined payment. This is not enough, on its own, for HSBC to hold him liable. So I also need to think about whether the evidence suggests that it's most likely Mr A consented to the payments taking place.

Having carefully considered everything both sides have said and provided, I don't think it's unreasonable for HSBC to conclude that Mr A authorised the payments. I say this because:

- Mr A had done online gambling before, on Mr B's advice, and appears to have won a fairly substantial amount of money. So Mr A and Mr B did have at least some history of helping each other to gamble online before this incident.
- From Mr A's texts with Mr B, both parties appear to accept Mr B made the transactions, and that Mr B owes Mr A the money. Understandably, Mr A seems surprised and disappointed at the amounts Mr B spent. But he doesn't seem to be surprised that Mr B made the transactions in the first place, nor does he seem suspicious about how Mr B managed to use his card. And Mr B doesn't deny making the payments, nor does he apologise for using Mr A's card or otherwise imply he was using it without his permission. It suggests that Mr A knew Mr B was going to use his card and gave him access, even if he didn't know how much money Mr B would lose.
- Similarly, Mr A didn't tell HSBC about Mr B when he reported the payments. I've not seen any evidence that he reported Mr B to the police either. And he spent about two weeks trying to get his money back from Mr B before ever getting in touch with the gambling company. This seems unusual if Mr A was concerned that someone had got his card details fraudulently. Again, it suggests that the issue wasn't that Mr B used Mr A's card without his permission, but more that he failed to pay him back.
- The gambling company emailed Mr A around the time of the transactions, but he didn't act on that or question it at the time. I do accept that Mr A could've missed the email or assumed it wasn't important. But it's also plausible that he ignored the email because he knew his card was going to be used for online gambling.

- The disputed payments were made using Mr A's correct personal and card details. And while it's possible to have got Mr A's personal details without his permission, it seems unlikely someone could've got Mr A's full card details without his permission. From what Mr A told us, he kept his card securely, it didn't go missing, no-one else had access to it, and his card details weren't kept anywhere else. So it's difficult to see how Mr B could've got all of Mr A's card details without him knowing.

So based on everything I've seen, I think it's fair for HSBC to refuse a refund. That's because, overall, I think it's more likely than not that Mr A authorised someone to make these transactions, even if they weren't made by Mr A himself.

My final decision

I don't uphold Mr A's complaint in this case.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr A to accept or reject my decision before 29 September 2019.

Adam Charles
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