

## **complaint**

Mr O complains that HSBC Bank Plc won't refund a number of transactions made from his current account in September 2014 which he says weren't carried out or authorised by him.

## **background**

In August 2014, Mr O asked HSBC for a new card on his account. But he kept the personal identification number (PIN) he'd been given in 2011.

On 9 September 2014, at around 4pm, Mr O contacted HSBC as he was trying to buy something online for around £780 but HSBC were stopping it. Mr O confirmed he had his debit card with him and he was the one trying to complete the transaction. This purchase went through at around 8pm that day. Mr O also accepts that he made some other purchases with his new debit card. However, as these were all online purchases, he hadn't used his PIN to authorise these transactions.

In the early hours of the next morning, 10 September, the first disputed transaction took place. This was when £130 was withdrawn from a cash point. Another £200 in cash was withdrawn at around 10am on the same day.

On 10 September 2014, between 9.30am and 9.40pm, Mr O's card was used over 50 times in a bookmakers.

On 11 September 2014, between 9.50am and 5.00pm, Mr O's card was used over 40 times in a bookmakers.

On each occasion, the genuine card and correct PIN was used.

When HSBC first phoned Mr O to discuss this complaint, he told the bank that he'd kept his PIN with his debit card. But, he said it was written down in a coded way, so he didn't know how the fraudster would've known what it was first time. But Mr O confirmed that the last time he remembered seeing it was when he made the online transaction for around £780. And he said he noticed he'd mislaid his debit card and oyster card a couple of days after the disputed transactions. So he thought he might've just packed them. At that time, Mr O hasn't reported this to the police.

Mr O has recently said to this service that he went to a number of parties that week and so he now thinks the card was either lost or stolen at one of these parties. He's also said that he didn't actually keep his PIN with his debit card – he was mistaken when he spoke to HSBC at the outset. He says that the card and PIN he'd written down were both in separate card wallets.

HSBC says that, from around 11.30pm on 9 September to 11.45pm on 11 September, Mr O logged into online banking 6 times using his secure key to confirm his identity. So HSBC questioned why Mr O only reported the disputed transactions on 12 September when he'd been checking online banking throughout. Mr O says he saw the transactions on his online banking page but, because of the amounts, he thought this was an error.

On 10 September 2014, cash of £700.00 was paid into Mr O's account. On 11 September 2014, cash of £300.00 was paid into Mr O's account. These deposits took place between the

disputed transactions and both were made using a cash deposit machine in a HSBC Branch using the genuine card and correct PIN. Mr O says he didn't pay in the £1,000.

Mr O complained because HSBC refused to refund the disputed transactions to him.

HSBC says that if, as Mr O told them at first, he'd written down his PIN, even if it had been coded as he suggested, then it'd be considered negligence and Mr O would be liable for the spending on his account. And if, as Mr O later told the bank, he didn't keep the PIN in the same card holder as his debit card, they wouldn't be able to say that he didn't make or authorise the transactions himself. In either case, HSBC would continue to hold Mr O liable for the amounts spent in September 2014.

One of our adjudicators looked at the information and evidence from Mr O and HSBC, including technical evidence about the use of the debit card, cash payments and online banking. And he thought that HSBC didn't need to refund the transactions to Mr O. Mr O didn't agree with this. He says that his PIN could've been obtained by shoulder surfing. And he says that if closed circuit television (CCTV) had been obtained, it would show who'd been using his card.

### **my findings**

I've considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Where there's a dispute about what happened, I've based my decision on what I think's most likely to have happened in light of the evidence.

Having done so, I'm satisfied that our adjudicator made the correct decision when he said that he wasn't going to uphold Mr O's complaint.

I say this because I don't think there's enough evidence to allow me to conclude that Mr O didn't make the transactions or authorise another to make them. In cases like this, I must assess the evidence available by looking at the two different versions of events and deciding what I think is most likely to have happened. In this case, I just don't think the evidence supports Mr O's version of events.

Firstly, I think that Mr O would've been acting negligently if he'd written down his PIN and kept it with his card, as he initially suggested he'd done. However, Mr O has since said that he didn't do this and that he still had his PIN with him when his card went missing.

In that circumstance, for me to accept that Mr O's card was used fraudulently, I'd have to believe, for example, that:

- it was possible for the card to be taken and used by a third party within a matter of hours of Mr O using it for online purchases;
- the same third party had access to Mr O's PIN;
- that person put in £1,000 in cash in to Mr O's account; and
- that person used Mr O's debit card for a large number of small transactions over quite a long period of time from the same two book makers.

This just isn't the sort of behaviour I'd expect from a fraudster. And, as Mr O hadn't actually used his card with his PIN since it arrived, I don't accept that he could've been the victim of shoulder surfing.

I'm surprised how long it took for Mr O to realise what was going on and report his card missing given that:

- he checked his account through online banking and says he noticed the unusual transactions; and
- he was aware that he'd lost or mislaid his card and had been out at a number of parties.

Taking everything into account, I just don't think that the evidence supports Mr O's claim that his card was used fraudulently or without his knowledge. It follows that I don't uphold this complaint against HSBC.

Finally, even if it was available, CCTV footage of the disputed transactions wouldn't change my overall decision. This is because it would either show Mr O making the transactions or someone else. But even if it showed someone else, this wouldn't prove that Mr O hadn't allowed a third party to use his debit card and his PIN.

### **my final decision**

My final decision is that I don't support Mr O's complaint and so there's nothing HSBC Bank Plc needs to do to put things right.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr O to accept or reject my decision before 29 June 2015.

Rebecca Ellis  
**ombudsman**