

complaint

Miss M complains that HSBC UK Bank Plc ("HSBC") won't refund disputed transactions that debited her current account.

background

I issued a provisional decision in September 2019 to explain why I thought Miss M's complaint shouldn't be upheld. And I said I'd consider anything else anyone wanted to give me. This is an extract from that provisional decision:

"Miss M says that 76 fraudulent transactions totalling £1,041 were made from her HSBC current account between 27 June 2018 and 4 September 2018. All of the transactions were made to gambling websites.

In September 2018, Miss M went to a cashpoint to withdraw her benefits but was unable to as she had insufficient funds in her account. It was at this point that Miss M realised there'd been a number of transactions, starting in June 2018, on her account that she didn't recognise. Miss M then called HSBC to report fraud on her account and cancel her card.

Miss M said she doesn't recognise any of the transactions and she didn't make them herself. She said she doesn't use gambling websites and she doesn't know anyone who does. She's also said she doesn't know how someone has got hold of her card details.

Miss M is concerned because the transactions have taken her into an unarranged overdraft that is now attracting interest that she cannot afford to repay. Miss M says HSBC shouldn't have allowed her to go into an unarranged overdraft.

HSBC said it won't refund the transactions made from Miss M's account. It said the transactions on the account were spread out over a number of months and for small amounts. And it doesn't feel this fits the pattern of a fraudster - who would've wanted to drain the account as quickly as possible to make sure they obtained all of the funds available. HSBC also said Miss M was in possession of the card and it had been used for genuine transactions before some of the disputed transactions, and after. And so it couldn't see how a fraudster would've got access to her card on multiple occasions and then been able to replace it without her noticing.

Miss M didn't agree with what HSBC said and so she brought the complaint to our service. Our investigator looked into the complaint and didn't think the complaint should be upheld. In summary, she felt unable to conclude that the transactions had been made fraudulently and she was persuaded they were most likely made and authorised by Miss M.

Miss M asked for the investigator's assessment to be reviewed by an ombudsman, so the complaint has been passed to me to look into.

my provisional 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, my review of the evidence has led me to the same overall conclusions as our investigator previously set out - and for much the same reasons.

But I also think HSBC need to do more to help Miss M repay the debt she is now liable for.

authorisation

Generally, HSBC can hold Miss M liable for the disputed transactions if the evidence suggests that it's more likely than not that she made them herself.

I'm satisfied from HSBC's technical evidence that Miss M's genuine card and security details were used to make the transactions. But the regulations relevant to this case say that is not, on its own, enough to enable HSBC to hold Miss M liable. So I also need to think about whether the evidence suggests that it's more likely than not that Miss M consented to the transactions being made.

From what I've seen, I think it's reasonable for HSBC to conclude that Miss M authorised the transactions herself. This is because:

- The disputed transactions were placed online using Miss M's genuine card details. Miss M has told us she keeps her card with her, she lives on her own with her children and no-one has access to her card. When Miss M reports the fraud to HSBC, it is still in her possession. And I can see from Miss M's account statements that she is using the card regularly between the disputed transactions taking place. And so there isn't a convincing explanation as to how a fraudster could've got hold of Miss M's card details, without her realising, in order to make the transactions. And I'm not persuaded that a fraudster who has access to Miss M's card details would bother to return the card to Miss M. There would be no benefit to the fraudster in doing so and it would place the fraudster at significant risk of getting caught.*
- The disputed transactions started in June 2018 and continued until September 2018 - when Miss M reported them to HSBC. During this period, Miss M logged into her online banking, presumably to check her account balance, a total of 24 times. So I think Miss M would've been aware of the transactions prior to September 2018, and had they not been made by her, I think she would've complained about them sooner. Especially given that some of the transactions mean that her account balance is brought to 0 in August 2018. And I think Miss M would've noticed had a fraudster drained her account of funds.*
- Miss M maintains a relatively low balance on her current account; it often has no funds available at all. She's told us she relies heavily on her benefit payments to pay for her everyday living expenses. And having looked over the activity on Miss M's current account I can see she was using the account regularly – her benefit payments are paid directly into this account. So, I think that had over £1,000 gone missing over a short timescale, Miss M would've noticed this relatively quickly. And I think she would've contacted HSBC as soon as possible because she relies on this money for her everyday living expenses.*

- *I also can't ignore that the transactions tended to debit Miss M's account after her benefit payments had been paid into the account. This suggests to me that whoever was using the card was aware of credits being made in to Miss M's account. And I'm not persuaded that a fraudster would have known when Miss M received her benefit payments in order to make the transactions.*
- *There are also two credits to Miss M's current account from the websites in question - amounting to £210. Miss M hasn't disputed these payments. And it seems likely to me that these credits are 'winnings' from the gambling activity that the disputed transactions have been used to pay for. There is no plausible explanation as to why a fraudster would obtain Miss M's card details to pay for gambling/gaming online only to have the winnings paid into Miss M's current account. There would be no benefit to a fraudster in doing so. And I can't ignore that Miss M logs into her on-line banking on the dates the credits are received. And this suggests to me that Miss M was expecting them. I'm satisfied she would've have seen the increase in her outstanding balance. And then Miss M withdraws the money at an ATM.*
- *I've taken into account what Miss M has said about not using online gambling websites or games. But I've also noted that one of the email addresses she has provided as a contact to this service refers to 'gaming'. Whilst this isn't conclusive, it suggests to me that Miss M is interested in gaming.*

Taking everything into account, I find, on balance, that Miss M authorised the transactions herself. It follows that I'm currently minded to say HSBC is entitled to hold her liable for them.

Miss M's unauthorised overdraft

Miss M didn't have enough money in her account to pay for the disputed transactions - they took her into an unarranged overdraft. Miss M is unhappy about this. And she's told us she asked HSBC to provide her with an arranged overdraft on three occasions in the past but HSBC declined to offer her this facility. And so Miss M thinks HSBC shouldn't have allowed her to go into an unarranged overdraft as it knew she wouldn't be able to afford to pay it back.

I understand why HSBC allowed Miss M to go into an unarranged overdraft. The transactions Miss M is disputing are guaranteed and so HSBC has an obligation to debit them from her account. And I think HSBC is entitled to hold Miss M liable for the transactions as I think she made them herself. She has to pay them back. However, HSBC also has an obligation to treat customers who are struggling financially fairly and sympathetically. And I think it could have done more here to help Miss M.

As Miss M's overdraft is unarranged, it is attracting charges and a higher rate of interest. The debt has increased significantly since the transactions originally debited the account. And it's clear to me that Miss M will struggle to repay this debt whilst interest and charges continue to be added at the rate they are. And so I'm currently minded to ask HSBC to remove any interest and charges added to the original unarranged debt. This will crystallise the debt and allow Miss M to set up a payment plan so she can fulfil her obligations to HSBC."

my findings

I've re-considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I'm pleased to say HSBC has told me that it agrees with my provisional decision and it is currently in the process of getting in touch with Miss M to arrange a repayment plan with her. Miss M didn't respond to my provisional decision with any further points.

As no further points have been put forward by either HSBC or Miss M, I've reached the same conclusions I did in my provisional decision and for the same reasons.

my final decision

For the reasons above, I partially uphold Miss M's complaint against HSBC UK Bank Plc. I direct HSBC UK Bank Plc to do the following:

- remove any interest and charges added to Miss M's original unarranged overdraft debt.
- contact Miss M to arrange a payment plan so she can repay this debt to HSBC.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 18 November 2019.

Emly Hanley
ombudsman