

complaint

Mr G complains that HSBC Bank Plc is holding him responsible for a debt on a credit card account. Mr G says he did not authorise the transactions – nor add the additional card holder he says carried them out. He says the bank changed the address on the account without his authority – allowing the fraud to go undetected. Mr G wants HSBC to accept responsibility for the debt (effectively to write it off). He is assisted in his complaint by Ms H.

background

The details of this case are well known to Mr G so I do not repeat them here. In summary, Mr G disputes:

- adding an additional card holder to his HSBC credit card account in late May 2008 – he says this was done fraudulently by his wife;
- authorising any spending on the account after that time; and
- changing the address on the account on several occasions after that time – this allowed the fraud to go undetected for a long time as statements were not sent to where he was living.

Mr G says he discovered the situation late in 2008. He also says his wife, whom I refer to as Mrs G, has admitted to forging his signature on the form adding her as an additional card holder on the account and to making the transactions. He says the signatures on the application form and various letters to HSBC are clearly not his and the bank failed to check them, which allowed the fraud to happen. Mr G complained to HSBC in October 2012.

HSBC rejected Mr G's complaint saying the signatures on some of the documents and letters were verified against the bank's records and continued to hold him responsible for the debt. Mr G was not happy with this so referred the matter to this service.

Our adjudicator did not recommend Mr G's complaint should be upheld. He was not persuaded there was not some form of arrangement for Mrs G to use the account. The adjudicator said this service did not have the means to determine the validity of the letters and signatures and, without being able to hear Mrs G's side of the story, we could not safely conclude HSBC had made an error. He considered it odd Mr G had:

- not alerted the bank when he discovered the issue (in 2008);
- claimed for a refund of charges on the account in 2009; and
- made (reduced) payments to the account at various times.

Mr G (through Ms H) did not agree with the adjudicator's view so the matter has been referred to an ombudsman for a final decision. Ms H said the reasons for Mr G's complaint had not been grasped. It was obvious Mrs G had acted fraudulently – the signatures were clearly not those of Mr G. He had not authorised any of the transactions and the bank had not followed appropriate procedures in checking the account or signatures. Ms H said Mr G made payments to maintain his credit rating and avoid prosecuting his estranged wife, which would not help Mr G's family.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision based on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence and the wider surrounding circumstances. Mr G has made a similar complaint about another bank. While that complaint has been considered separately, I have referred to all the information available to make sure I consider the full circumstances of the matter.

Having done so, I have reached the same conclusion as the adjudicator, for broadly the same reasons. I am sorry to disappoint Mr G.

Deciding which party is responsible for any debts is normally taken into account as part of the financial settlement under divorce proceedings or any separation arrangements. It is possible the responsibility for the debt with HSBC has been – or can still be – dealt with through this route.

I cannot say who completed the form asking HSBC to add another card holder to Mr G's credit card account. Nor can I say who carried out the transactions. I have no reason to doubt Mr G's statement that his estranged wife has admitted to doing so. And I can understand the reason behind his reluctance to prosecute Mrs G. But the key issue I have to consider is whether HSBC can continue to hold Mr G responsible for the debt on his credit card account. I believe it can.

Mr G's monthly account statements show all the transactions between mid-May and early December 2008 were made using his credit card – not the additional one applied for in Mrs G's name. Some of those transactions are withdrawals at cash machines, which would mean the chip embedded in the card was read and the PIN entered. Mr G said his card was in the family home. So it is possible somebody else could have used it. But, crucially, he has said the PIN was known only to him.

The adjudicator is right that this service does not have the means to determine the validity of the signatures on the documents. I am not a handwriting expert but I can see some variation in Mr G's signature over time. This is not uncommon – people's signatures change. But I note a strong similarity between Mr G's signatures on:

- an application form from 2000 for a credit card with the bank covered by Mr G's other complaint;
- the form claiming a refund of charges on the HSBC account in 2009 (which Mr G formally updated with HSBC in 2011);
- an income and expenditure form submitted to HSBC (to assess what payment may be appropriate on the credit card account) in 2010; and
- the complaint form he submitted to this service in 2013.

The signature on his application for the credit card with HSBC in 2004 is different to the four instances noted above. And some of the signatures from 2008 bear a resemblance to the one on the HSBC form from 2004. This indicates to me that Mr G's signature did in fact change over time; he appears to revert to his 'original' signature sometime between 2004

and 2009. So I do not believe any variation in Mr G's signature – on its own – is strong enough to say HSBC made an error.

I accept there may be some doubt over the instruction to change the address on the account in June 2008. But the address was changed to Mr G's temporary address in time for the November 2008 statement. HSBC says this change was most likely carried out by telephone using its automated identification process, which is available to the primary cardholder (Mr G) only. I believe many banks operate similar arrangements. I do not agree with Ms H that lack of personal involvement in such requests makes them necessarily unsecure – only the primary cardholder should know the required security information.

Like the adjudicator, I find it strange Mr G should seek to reclaim charges on the account in 2009 and agree a (reduced) payment plan in 2010 – having submitted details of his income and expenditure – if he did not think the debt was his responsibility. Ms H says that Mrs G worked for the company submitting the claim to refund charges. But that does not explain the claim form being signed by Mr G himself (using his 'original'/current signature).

The adjudicator was not persuaded there was not some form of arrangement in place whereby Mrs G was allowed to make transactions on the account provided she paid them off in full. When I combine all the above, I would go further than this – I think it more likely than not that such an arrangement was in place.

It appears that when Mrs G did not make payments (probably as promised), Mr G did so. I find his reasons for doing so perfectly understandable – and, after all, the credit card account was in his name. So, ultimately, he is responsible for any debt on it, unless agreed differently as part of the financial settlement under divorce proceedings or separation arrangement.

I know this will be a disappointment to Mr G but I do not believe I can fairly direct HSBC to write the debt off.

It is possible Mr G may be experiencing some financial difficulties as a result of his debts. So it is important that I remind HSBC that it should respond positively and sympathetically to his situation.

my final decision

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

Andrew Davies
ombudsman