

complaint

Mr R complains that HSBC Bank plc will not refund two disputed transactions made on his account.

background

Mr R has a current account with HSBC. Two debit card transactions were made on his account – these were for activity on a betting website with which Mr R has an account. Mr R says he did not make these transactions and did not give anyone his security information to enable them to be made.

Mr R says that neither HSBC nor the betting website has been able to give him satisfactory information about how the transactions came to be made. He also says that he had virtually used up his overdraft facility on his account prior to the two disputed withdrawals, and so HSBC should have declined them rather than allowing his overdraft facility to rise. He believes that the transactions should have triggered security alerts at HSBC, which should have stopped them.

HSBC considered that the transactions were Mr R's responsibility, and did not accept that it should refund them. As things were not settled, Mr R brought his complaint to this service where an adjudicator investigated it.

From the evidence, the adjudicator concluded that HSBC was entitled to hold Mr R liable for the disputed transactions. The adjudicator was satisfied that appropriate security procedures were in place, and were passed, to enable the transactions and did not agree that HSBC should have stopped them. In the adjudicator's opinion, HSBC had been entitled to increase Mr R's overdraft facility to accommodate the transactions.

Mr R did not agree with the adjudicator's conclusions. His representative said (in summary):

- The adjudicator did not investigate the complaint fully, and did not take proper account of HSBC's responsibility to protect its customer and prevent fraud. She also got some details about the account limits wrong. He is not confident that the ombudsman service is impartial.
- Mr R had been working to reduce his overdraft debt, and the overdraft limit was subsequently reduced so that it was almost at its limit when the disputed transactions were made. Everyone he has spoken to agrees that HSBC should not have allowed these transactions, given that the account was at the limit of its overdraft facility.
- Previous gambling transactions on the account were for lesser total value, and did not take the account over its limit. So the disputed transactions were very different in character – and should have raised alarm bells. Nobody they know can understand why the transactions were allowed.
- He is taking steps to try to find out from the police the source of the internet protocol address used to make the transactions.

my findings

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

I realise that Mr R and his representative are very unhappy that the HSBC fraud investigator would not speak with them personally, and feel that HSBC reached its decision without taking enough time or listening properly to them. They also feel that HSBC has drawn unwarranted inferences from some of the evidence.

I have reviewed this complaint as an impartial ombudsman who is independent of both parties to this dispute. In doing so, I have thoroughly considered what Mr R and his representative have said – as part of my careful review of the evidence.

Mr R's representative has put forward three main reasons why Mr R should not be held liable for the disputed transactions:

- they were of a suspicious type, and should have been caught by HSBC's security systems;
- HSBC should have declined them, because Mr R's account was virtually at its overdraft limit when they were presented; and
- Mr R did not make them – so they must have been made by someone who managed to get Mr R's details and use them without his authority.

I shall make my findings on each of these points in turn.

security systems

Banks do not have a general duty to a customer to monitor the transactions made on their account. But banks are required generally to have systems in place to counteract fraud – which will include such things as money laundering. As part of a variety of measures, banks use systems that are designed to try to identify account transactions that have a high likelihood of being fraudulent. Given the many variables involved, these cannot guarantee that all fraudulent transactions will be caught – or that no genuine transactions will be caught.

It is not in dispute that Mr R used his account for regular gambling transactions to various betting sites, including the one to which the disputed payments were made. He had an account with the betting site through which the transactions were carried out. Each transaction had been successfully verified through the card network verification system, using the password Mr R had previously put in place. Mr R's previous, undisputed, transactions had been for much smaller amounts – though sometimes for quite long series of smaller transactions.

I have thought about whether the disputed transactions should have stood out as being out of character and inherently suspicious. In my view the transactions were not, objectively, out of character for Mr R; they were for a service he frequently bought, and were made through a site that he had used before. They had been verified through the card network. The only unusual feature was the amount, which was larger than before – but I do not consider that

this created a duty to Mr R to stop or question them. I find that HSBC was not negligent in failing to flag and/or stop these transactions as suspicious.

overdraft limits

Mr R's account had an overdraft facility that had included an interest-free element. There had been changes to the interest regime and limit over time, and I note that Mr R had more recently been hoping to pay down his overdraft debt. Mr R's representative makes the point that previous account usage had been kept within overdraft limits.

At the time the disputed transactions were made, Mr R's account was within a few pence of its upper limit. In the ordinary way of things, a bank is entitled to make a commercial decision about whether or not to honour a transaction that would take the account in excess of its limit.

Given the previous limits in place on the account, and the overall conduct of the account, I consider that HSBC was entitled to take the decision to pay these transactions. I am not persuaded that it had a duty to Mr R not to pay them because they exceeded his limit.

unauthorised transactions

These transactions were made from credit. Applying the relevant law and rules, HSBC may hold Mr R liable for them if he made or authorised them. So I will find in Mr R's favour if, in my view, the evidence is insufficient to show – on a balance of probabilities – that he either made or authorised the transactions.

Mr R has sole use of his password-protected laptop, which he normally keeps secure at home but sometimes uses at friends' houses. Mr R's betting account is not limited to access from his laptop – it can be accessed from anywhere, provided the right security codes for his account are used. There is no suggestion of any point of compromise at Mr R's home. Mr R says he has always kept all his security details secret.

I am satisfied, from the technical evidence, that whoever made these transactions had access to the security codes for Mr R's account with the betting site and also to Mr R's password for the card network verification process that was used for each transaction.

Mr R says that someone must have somehow got hold of these details and used them to make the transactions, but he is unable to be any more specific than that. He has not suggested any occasion on which his details could have been compromised, nor does he identify any individual who could have been in a position to obtain them. Rather, he stresses that he has always kept them secret. Given the care that Mr R says he took to keep his security details safe, I am unable to see that they could – realistically – have been obtained without his knowledge.

Whoever made the bets would also be aware that any winnings would automatically be paid by the betting site into Mr R's HSBC account. So, they would only be available to someone who also had access to Mr R's bank account. Mr R accepts that it is difficult to see what a third party stood to gain from the transactions, and suggests that they may simply have enjoyed playing. But that does not seem a very persuasive argument, and it is a fact that only Mr R could have benefitted from any wins.

After careful consideration, and on the available evidence, I find on a balance of probabilities that Mr R either made or authorised the disputed transactions. It follows that I consider HSBC is entitled to hold him liable for them.

As a final point, I know that Mr R's representative is anxious to trace the source of the internet protocol address used to make the transactions, but I do not have any authority to obtain that information for him.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R to accept or reject my decision before 13 July 2015.

Jane Hingston
ombudsman