

## **complaint**

Mr S complains that HSBC Bank plc will not refund disputed transactions on his credit card account.

## **background**

Mr S was abroad with business associates. He says that they were unfamiliar with the city and so took a taxi to an area which they had heard had good night life and went to a night club that looked to be good quality.

Mr S says that he believes a woman who approached him in the club then arranged for his drink to be drugged. He explains that he has only patchy memories of what happened after that and woke up the following afternoon in his hotel room, with his card in his possession.

Two large transactions had been made with his credit card. Mr S says he did not knowingly or willingly make these and does not consider that HSBC is entitled to hold him liable for them. He also says that transactions made on cards which he held with other banks have already been refunded.

HSBC says that the transactions were made using Mr S's genuine card and PIN and does not accept that Mr S was the victim of fraud. Accordingly, it considers that it is entitled to hold Mr S liable for the transactions.

As things were not settled, Mr S brought his complaint to this service where an adjudicator investigated it. From the evidence, including technical evidence about the use of the card, the adjudicator was not persuaded that HSBC must refund the disputed transactions. Because of that, the adjudicator did not recommend that the complaint should succeed.

Mr S did not agree and said, in summary:

- One of his main complaints is that when he contacted his offshore credit card company to say that one of the transactions on that card was bad, they stopped it from going through. HSBC did not do that, but should have.
- The other UK bank with which he held a credit card also refunded transactions, having investigated and been satisfied that they were fraud.
- It does not make any sense that HSBC should authorise these transactions to go through and then make him send a statement saying they were fraud, rather than just stopping them straight away.
- The fraudsters made him put through a small 'tester' transaction on another card in order to get his PIN. It is obvious that these transactions are fraud, they are not typical for his account and took him over his credit limit.
- There are drugs that can be used to render the victim able to act but unable to resist or remember. He has tried to report the matter to the local police but they are not interested. He did not have time to do anything after he woke up as he had to leave quickly for the airport.

- His work colleague, who was similarly drugged, has had his card transactions refunded. He did not mention the drugging to HSBC at first, as he did not want to worry his wife and could not risk her overhearing the phone conversation.
- It is for HSBC to prove that fraud did not take place, not for him to prove it did.

### **my findings**

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

Put simply, HSBC may hold Mr S liable for these transactions if I am satisfied from the evidence that Mr S made or authorised them. The test I shall use is the balance of probabilities – the same test that a court would apply in this type of dispute.

The area in which the disputed transactions took place provides sophisticated adult night life. Mr S says that he had three credit cards with him at the time – his HSBC card, an offshore card issued by another member of the HSBC group and a card issued by a different UK bank. As I understand it, he used the same PIN for all three cards and kept no record of it on him.

Mr S says that he was given a drugged drink and that he has no real memory of the hours that were spent at the club. He says that fraudsters must have either made him make the transactions while he was drugged, or been able to use his card and PIN to make the transactions without his knowledge or involvement.

We have obtained evidence from HSBC about the disputed transactions on Mr S's HSBC card and the transactions on his offshore card, and from the other UK bank about the transactions on Mr S's other credit card. Mr S did not input his PIN for the offshore card until *after* the disputed transactions had already taken place – so that cannot have been a point of compromise for the PIN.

By contrast, the PIN was input on Mr S's other UK card some five hours *before* the disputed transactions. If fraudsters had the PIN and had drugged Mr S to enable them to get control of his cards, then it is difficult to see why they waited so long before using his HSBC card.

By Mr S's own account, he does not remember the events of that night at all. So he cannot really say with certainty whether or not he made the disputed transactions. When he spoke with HSBC to report the disputed transactions, he did not mention being drugged. I have noted the reasons he has given for that, and what he says about his colleague, but I find it difficult to understand why he did not mention it at all until later.

As the adjudicator has explained to Mr S, we deal with each complaint on its own merits. It follows that the fact another card issuer has made a refund (or has refused to make a refund) in relation to transactions made in similar circumstances does not necessarily mean we will take the same view.

That said, Mr S is in fact mistaken in his belief that transactions on the offshore card were blocked by the card issuer after he had told it what had happened, and that a transaction that succeeded was refunded. Rather, two cash transactions were declined at the time they were attempted and a third transaction was approved but then not applied to Mr S's account by the merchant.

The other UK card that Mr S had with him was a corporate card, rather than a card account held in his name. The reason why the card issuer did not re-apply the transaction made on that card was to do with the relevant card scheme rules.

Mr S has said that it is possible he was given a drug which, though allowing him to remain awake and functional, meant he was unable to resist carrying out instructions from the fraudsters to make the transactions and was prevented from remembering anything about it afterwards.

Even if that is possible, having very carefully assessed all the available evidence I am not persuaded that it is probable. It remains difficult to see why fraudsters in possession of Mr S's card and its PIN would not simply take and use them straight away. I find, on a balance of probabilities, that Mr S either made or authorised the disputed transactions. It follows that HSBC is entitled to hold him liable for them, even though he cannot now remember what he did.

As a final point, I note that Mr S has been attempting to get further information from the other UK bank and/or from the club in which the disputed transactions were made and had asked whether we could hold matters in abeyance until he can establish whether there is any more evidence obtainable from those sources. However, given my findings, I do not see that this would be likely to affect my view on the merits of Mr S's complaint about HSBC.

### **my final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 9 November 2015.

Jane Hingston  
**ombudsman**