

complaint

S, a limited company, complains that HSBC Bank Plc will not refund payments that were not authorised from its account.

background

The payments that are disputed were made using the company debit card held by the director. These were to two separate gambling businesses and were made online as 'card not present' payments and total £2,170. HSBC said it had made a security call to the director at the time in which he confirmed knowledge of at least one attempted payment. It had contacted one gambling business and, based on the evidence it provided, declined to refund the payments. It said it was satisfied these were authorised. And a withdrawal of some of the related winnings was made from a betting shop. The business involved told it this would mean that the card details would have needed to be verified.

The adjudicator recommended that the complaint be upheld and the disputed payments be refunded to S with a payment of £100 for inconvenience. She didn't think any adverse information should be recorded about this as the director thought had been. She said that:

- She had listened to the security call that HSBC had with the director. It had not told him that the payments that had been declined were for gambling. He had only clearly acknowledged a payment of £20 - which was a separate one he did make regularly to another party. She did not think HSBC had been clear that this was a fraud check as the director seemed to think it was made because the account might have gone overdrawn.
- She had contacted both gambling businesses. Although both had the correct name, account details and address for the director, the email address and telephone number given were different.
- The business HSBC contacted (where the total payments in dispute were £2,100) told her that withdrawals were possible with a separate card and PIN issued by that business. She was not satisfied it had confirmed the HSBC payment card details before allowing a withdrawal of winnings of £200.
- The other business said that the account details had never been verified and that there were funds available to withdraw. It would have expected an attempt would have been made to do so.
- On balance she found it odd that the director would use a company account for gambling payments in this way and then complain about it the next day. She said there was no evidence of any gambling transactions on his personal account.
- She did not think HSBC had done enough to show that these payments were authorised.

HSBC did not agree. It said that the director was given the opportunity to question the attempted payments during the security call. He did not seem surprised by the payments. And the operator would not have known that these related to gambling payments from the summary business name recorded against them. HSBC thought it was unreasonable to assume that the business which allowed the withdrawal did not follow its own security procedures and verify the payment card. And even in the unlikely event it had let someone taken money out without doing so it could not see that HSBC should be held responsible for this. It said it could not see any evidence of the standing order or direct debit the director was referring to. It did not think the most likely explanation was that these payments were not authorised.

my findings

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

I won't be able to say exactly what happened here. I'll need to decide whether I think it's reasonable for HSBC to hold S responsible for these payments.

I want to set out a brief summary of some key timings here first:

On 18 September 2016 a gambling account, which allowed betting shop transactions using a separate business issued card number and PIN was set up. As soon as the account was verified online a payment of £150 was made (this shows at 16:47 on HSBC's systems). An hour later a withdrawal in a betting shop a considerable distance from the director's home address for £200 was made. From 18.00 six attempted payments using the HSBC card were declined. The card was blocked. HSBC called the director and the card was unblocked. A genuine payment for £14.70 was allowed with the card details at 18:32 – and seems to be a regular one that had been established for computer services.

On 19 September 2016 payments to this gambling business started again at 12:39 and continued over a period of two hours when the majority of the money in dispute was debited. There were no further withdrawals at a betting shop.

On 20 September 2016 an online account was set up with the other gambling business and £70 of payments made to this. It seems a further payment to a ticket retailer was made that day and, having been disputed, shows as being debited and re-credited to the bank account of S on 23 September 2016. The HSBC debit card was cancelled on 20 September 2016.

I've listened to the HSBC call to the director on 18 September 2016. I am not satisfied with HSBC's explanation that an experienced operator ought not to have to know that these were gambling payments. Even if the name was not obvious or known to her, the classification of the business ought to have been, and this could well have been the reason why a suspicious pattern had been identified. The director was vague and seemed distracted during the call and only clearly accepted a payment he made for £20. I've seen such a payment from the account on 14 September 2016 which seems to be made using an electronic payment provider and is marked as a direct debit. And as the adjudicator says, the director asked whether there was an overdraft position seemingly misunderstanding the reason for the call.

I've also listened to a recording of a later call between an HSBC investigator and the gambling business. The person at that business described the security procedures and summarised by saying it suggested to him that the person withdrawing the money had possession of the debit card.

To find that the director authorised these payments on behalf of the company I'd need to think:

- He decided to access company funds for gambling and always planned to dispute these payments and claim the money from HSBC.
- He set up gambling accounts using a different phone number and email address.
- He used a betting shop away from his home address to facilitate this fraud.
- He withdrew his initial winnings. He then tried to make a number of further bets minutes later.

- He received a call from HSBC very quickly after that. He was deliberately vague planning to continue to make payments. He knew the debit card was unblocked but he decided not to make any further payments then but left this to the following day.
- He set up an account with a different business and made no attempt to withdraw the balance available there- even though he would have had the necessary identification.

I note that HSBC did not contact the second business about what happened. Similarly the email and telephone numbers that business had for the director did not match. I also don't think it took into account that a payment to an online ticket agency was successfully disputed - suggesting some unauthorised use of the debit card had been accepted.

I can't know whether the gambling business that allowed a withdrawal went through its verification process and saw the card. There are only statements about what ought to have happened - there is no audit of what did or statement from relevant staff involved. And I'm not convinced that if it did not do the checks this means that it is responsible for the related loss. That would be a matter between it and HSBC. This was a withdrawal not a payment. And all the other payments to that business seem to have been gambled away in any event. The question here is about how the payments were authorised.

My decision can only be based on what I think is most likely. Having considered the evidence about what happened and my analysis above I am not persuaded, on balance, that these payments were authorised by the director on behalf of S - or that for the same reasons that they were carried out with his knowledge.

So I agree with the resolution suggested by the adjudicator. It's not been made clear to me what adverse information, if any, has been recorded or reported by HSBC about this suspected fraud. But given my findings I wouldn't expect anything arising in this way to remain in place when the payments are refunded.

my final decision

My decision is that I uphold this complaint and order HSBC Bank Plc to put S back in the position it was before these payments and so refund £2,170 and pay it compensation of £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 18 January 2018.

Michael Crewe
ombudsman