

complaint

Miss S complains about a transaction for around £23,800 that was taken from her account with HSBC Bank Plc.

background

I set out the background to this complaint and my initial findings in my provisional decision, a copy of which is attached and forms part of my final decision. In my provisional decision I explained why I was minded to not uphold Miss S's complaint. I invited both parties to let me have anything in response they thought was relevant.

HSBC said it had nothing further to add and accepted my provisional decision. And Miss S didn't respond.

my findings

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

Because neither party has anything more to add I've reached the same conclusions as set out in my provisional decision and for the same reasons.

my final decision

My final decision is that I don't uphold Miss S's complaint against HSBC Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 11 April 2016.

Rebecca Ellis
ombudsman

copy extract provisional decision from 10 February 2016

background

In February 2014, Miss S tried to make a card transaction for around £23,800 to a company, C. The transaction was to pay for a car, however, it was declined. So Miss S contacted HSBC to find out why it'd been declined. She was told the transaction wouldn't go through as it was too large for a debit card payment. So the advisor suggested Miss S transfer the money to C instead.

Miss S says the payment was meant to settle a debt with a third party, Mr B. She either had to pay Mr B's account with C or give Mr B the money directly. During the call with HSBC, she said she couldn't get the bank details for C, so she transferred £24,000 to Mr B instead.

However, the day after her card transaction had been declined, Miss S's account was nearly £23,000 overdrawn. Miss S says that when she noticed this, she complained to HSBC because she'd already paid the debt. HSBC responded and said C used an authorisation for £20 to collect the amount of just under £23,800 from Miss S's account. Although it couldn't just take the money back, it could raise a dispute for the transaction. And, in the meantime, it'd give Miss S a temporary credit while the matter was investigated.

A chargeback was raised by HSBC – the reason was that Miss S had paid by other means. It was declined because C responded to say it hadn't received two payments from Miss S. Even so, HSBC pursued the matter with the merchant on behalf of Miss S. And, in May 2014, the reason for the dispute was changed from paid by other means to incorrect transaction amount. Again, C confirmed it didn't receive two payments from Miss S. And the money collected was used to buy a car. The bank also asked Mr B to return the money. But it says he responded to say that the funds were expected and refused permission for HSBC to take the money back.

In April 2015, Miss S closed her bank account with HSBC. But the bank reopened it so it could debit the amount paid to C back to Miss S. And Miss S's account is now being charged overdraft fees and interest on the amount that's outstanding.

Miss S says she hasn't received any goods from C and didn't authorise C to take the payment from her account. And the £20 payment was taken using a manual card not present transaction, not by chip and PIN. So she wants the bank to refund the money to her account, cancel any interest and charges, and close it. She's also concerned about her credit rating.

HSBC didn't uphold Miss S's complaint. It says Miss S wasn't clear at first about the events that led to her account becoming overdrawn. And it pointed to a number of inconsistencies that it felt existed in what Miss S was saying. And said this is evidence that Miss S hadn't been honest throughout her dealings with it regarding this matter. So HSBC concluded that Mr B had benefitted from the funds twice - by obtaining the car and the funds from Miss S.

Our adjudicator looked at this matter and she upheld Miss S's complaint. She felt that, even if Miss S had authorised the transaction for £20, this would be the amount she would've expected C to charge to her account. She felt this was supported by the available funds in Miss S's account – it being unlikely that Miss S would allow over £20,000 to be taken from her account knowing that the funds were no longer available.

In relation to the chargeback raised by the bank, our adjudicator wasn't surprised that the first chargeback attempt failed - Miss S didn't pay C by other means. And she couldn't find any evidence that Miss S had told HSBC the transfer went directly to C.

Our adjudicator felt HSBC should've tried a chargeback using the reason that Miss S didn't authorise the transaction. Overall, she didn't believe, on balance, that Miss S authorised the large transaction to C. So she recommended that HSBC refund the disputed transaction as well as any interest and charges associated with it.

Miss S was happy with this outcome but HSBC didn't accept our adjudicators view.

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. Where there's a dispute about what happened, I've based my decision on what I think's most likely to have happened in light of the evidence.

Although a number of issues have been raised, this decision only addresses those issues I consider to be materially relevant to this complaint. However, I've given careful consideration to all of the submissions made before arriving at my decision.

Having done, I think it's likely that the bank did do something wrong – either when it allowed the payment to C to go through or when it raised a chargeback with C using the incorrect reason. Despite this, I don't currently intend to uphold Miss S's complaint against HSBC. And even if the bank had started the chargeback using the correct chargeback reason, I think the dealer would, in all likelihood, still have refused it. This is because it'd only been paid once for a car that (as far as it is concerned) was sold to Miss S.

These are my provisional findings because I think that Miss S and Mr B had, in February 2014, a financial and non-financial relationship with each other. And I think this relationship is continuing. So I cannot be sure that Miss S and Mr B didn't have the benefit of both the car bought from C and the money Miss S transferred to Mr B. In view of this, I don't think it'd be fair or reasonable for me to ask HSBC to pay money to Miss S. I've explained why I say this in more detail below.

In response to questions from this service, Miss S has said:

- Mr B operated a business, S, with her step-father and this is how the debt came about.
- she had the money in her account as she was lending it to her step father to start a business with Mr B.
- the money came from a car accident when she was a child. And had been released to her when she was 18 years old.
- (when asked about the nature of her relationship with Mr B) she said Mr B was the ex-business partner of her step-father.
- she called Mr B her 'partner' during the initial phone call with the bank to make the transfer to him. But she told our adjudicator she meant '*partner, not lifelong partner*'.
- (when asked if Mr B was in possession of the car) '*After the incident, I tried to call him but he was on holiday. However my stepfather contacted the family and they confirmed they did not get any vehicle from C and that the transfer from my account had been successful to his account. As I said, I did not know him in person and my family have not really had any contact with them apart from that one time. To be honest this debt was not one of those positive relations between families, it was one of those negative incidents where a business partnership had not turned out the way that it should have and that is the reason why they are not in contact.*'

There are clear differences between Miss S's version of events and the evidence in this matter. I say this because, from the documents and evidence available to me, I'm aware that:

- Miss S's step father wasn't a company officer for S and hasn't got any company house records for company appointments.
- W, a business where Mr B is the sole shareholder, was registered at Miss S's address in 2011. And it's now registered on the same street as Miss S's address but a few numbers apart.
- From around the end of 2010 to February 2014, Miss S and Mr B (including W) frequently transferred money to each other. Overall, the amounts transferred were significant – tens of

thousands of pounds. Most had references, for example, 'zara coat', 'car', 'need money', 'petrol', 'tax'.

- Miss S has another bank account with another bank, B. And Miss S and Mr B (including W) are still making transfers of money to each other through Miss S's bank account with B. The latest record we have of such a transaction through this account is from January 2016 for £1,000.
- C says that Miss S was the buyer of the car and it's sent us screenshots of its records which confirm this.
- Mr B had car insurance for the car bought from C. This insurance started in February 2014 until later that year when it was suspended.
- Mr B's car insurance policy was registered at Miss S's home address.

There are further issues with Miss S's version of events. For example, the banks notes from when Miss S called it to say she was unexpectedly overdrawn suggest she told it:

- as the money hadn't reached C's account, C didn't believe the transaction had been done and insisted chip and PIN was attempted again.
- so she allowed C to try again using her card.
- but she wouldn't have handed her card over for this second attempt if she hadn't been assured during earlier call with the bank that it wouldn't be authorised.

However, what concerns me about this is that Miss S knew she'd transferred the money to Mr B, not C. So there was no reason for the money to have reached C's account. Or for C to think it was going to unless Miss S had told C that it would. Even so, by this point, as far as Miss S was concerned (according to her version of events), she'd paid the debt due to Mr B. So she didn't need to have any further involvement with C. And it doesn't fit with her version of events that she would trouble herself further with C if she'd paid her step fathers debt direct to Mr B.

These inconsistencies concern me. And because of this, I don't feel able to say that Miss S has been honest in her dealings with this service (or HSBC).

And, as I've explained above, I think that Miss S and Mr B had, in February 2014, a financial and non-financial relationship with each other. And I think this relationship is continuing. So I cannot be sure that Miss S and Mr B didn't have the benefit of both the car bought from C and the money Miss S transferred to Mr B.

It follows that I don't currently intend to uphold Miss S's complaint against HSBC.

my provisional decision

For the reasons set out above, my decision is that I don't currently intend to uphold Miss S's complaint against HSBC Bank Plc.

Rebecca Ellis
ombudsman