

complaint

Miss J complains that HSBC Bank Plc unfairly stopped and closed her bank account.

background

Miss J maintained a current account with HSBC, for which she held a debit card. At the time of the events complained about, Miss J had not used her account much and the balance in it was thirty-nine pence overdrawn. Miss J says that this was because her job was paid in cash and so she had no need to use the account.

Miss J says that, as she did not often use the account, she had not noticed that her debit card had gone missing. She says that the first time she noticed this was when HSBC asked about the card and she realised she did not have it.

Prior to that, three cheques had been paid into Miss J's account and subsequently discovered to be fraudulent. Miss J says she did not pay the cheques into her account and knows nothing about them. When HSBC became aware that the cheques were fraudulent, it reversed the credits on Miss J's account and wrote to tell her what had been done.

HSBC closed Miss J's account and made a registration on a fraud prevention database. Miss J says that this has prevented her from opening another account. She would like HSBC to remove the registration and pay her compensation for the inconvenience caused to her.

An adjudicator investigated the complaint and concluded that it should be upheld, recommending that HSBC remove the registration and pay Miss J £150. Miss J did not consider this went far enough, and said she should receive more compensation.

I considered this case and issued a provisional decision on 19 August 2014. That provisional decision set out the following provisional findings:

Miss J explains that, from about September 2012, she had been paid in cash and so had lost track of her debit card. She says she last used it in a fast food outlet on 11 January 2013.

Looking at the account, Miss J seems to have used her card quite frequently until the account ran out of money in November 2012. She did not then use her card at all until 11 January 2013, when she made a payment of £1.20 in a supermarket and £0.99 in a fast food outlet.

There is no further activity on the account until 30 January 2013, when three cheques were paid into the account. These were subsequently notified as being fraudulent and HSBC reversed the credits the next day, before the point at which the cheques would have become available to draw on.

HSBC has provided copies of a letter sent to Miss J on 31 January which includes a sheet with all three cheques detailed on it and explains that these cheques will be returned unpaid and the account debited, and three further letters (one in respect of each cheque) also sent to her on 31 January confirming they had been debited to the account.

Miss J says that she did not receive any of those letters until some time after the dates they were posted. But she agrees that she received a letter from HSBC dated 7 February, in which it told her that her account was suspended and would be closed. On receipt of that,

Miss J contacted HSBC and says it was only then that she realised her debit card was missing.

Miss J points to the fact that none of the cheques was made out to her and says HSBC should not have paid them into her account. Whilst agreeing that she may have been reckless with her bag, which allowed someone to get hold of her debit card, Miss J says the fraudulent use of her account was nothing to do with her and she should not be linked to it by HSBC.

Whoever paid the cheques into Miss J's account knew her account number and the sort code of the branch where her account was held. Stealing Miss J's debit card would not – on its own – provide all that information. HSBC could not have known that the cheques were fraudulent at the time they were initially credited to Miss J's account, since they had all been paid in at branches of other banks.

It is not clear why someone would take the trouble to pay stolen cheques into Miss J's account unless they believed that they could gain by it. Having paid in the stolen cheques, a fraudster would normally hope to exploit a potential small 'window' of time during which it might be possible to draw on the cheques before HSBC became aware that they were fraudulent.

But, in order to do that, the fraudster would first need to have set up some means of accessing Miss J's account without difficulty. If they had the debit card, they would also need Miss J's personal identification number ("PIN") to go with it.

The last time Miss J used her debit card was on 11 January 2013, even though she says she had, by then, stopped using her account because she was using cash instead. As there was virtually no money in the account, her use – even though for minimal amounts – was enough to take the account very slightly overdrawn. It is not clear why Miss J suddenly decided to use her card that day.

If an opportunistic fraudster had happened to be able to watch and memorise her PIN in the fast food outlet on that day (which is the only point of potential compromise that I have been able to establish) it strikes me as very unlikely that – in possession of both the card and its PIN – they would then have risked waiting around for almost three weeks without making (or even attempting) any sort of use of the card.

They were not to know that Miss J did not normally use her card and so would not notice that it was missing – more likely, from their perspective, was that Miss J would quickly see that her card was missing and stop it.

After very careful thought, I consider that the available evidence does not support Miss J's case and I do not find Miss J's representations about her use and knowledge of the account to be persuasive. In view of that, I provisionally find that HSBC Bank Plc is not obliged to remove any registration or pay any compensation to Miss J.

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 gave both parties a month from the date of my provisional decision in which to make any further points before I reached my final decision on the case. HSBC had no further points to make. Miss J did not have any new points or evidence, but was concerned about how she would get another bank account if I did not uphold her complaint.

My review of this complaint does not cause me to alter the conclusions I reached in my provisional decision, which I now confirm.

my final decision

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

Jane Hingston
ombudsman