

Complaint

Mrs C complains HSBC UK Bank Plc held her liable for a debt she says she's not responsible for. She says she's the victim of a sophisticated fraud, so HSBC should remove any negative information recorded in relation to the debt from her credit file.

Background

Mrs C opened two accounts with HSBC in 2010, a current account and a savings account. In August 2014 two other savings accounts were opened in her name and several cheques were deposited into those accounts, totalling £8892. The funds were transferred to Mrs C's current account, after which they were dissipated via a series of payments, including ATM transactions. The cheques were flagged as fraudulent and HSBC refunded amounts equivalent to the funds that were deposited, leaving Mrs C overdrawn on her current account and the two newer savings accounts. This left her with a debt of £9017.83.

HSBC closed Mrs C's accounts in late 2014 and recorded a default in relation to the debt. They sold the debt in January 2017 to another company and removed the default marker. The company who then owned the debt re-recorded a default against her in July 2017. Mrs C says she's still being pursued for the debt and receives unpleasant letters from this company.

Mrs C says she didn't deposit the cheques or open the two savings accounts. She says she didn't make any transactions on her current account (barring any direct debits) after the cheques were deposited, up until 9 September 2014, by which time the funds from the cheques were spent. She says she reported the fraud straight away in 2014 after being contacted by HSBC about the cheques. And she says HSBC agreed not to hold her liable for the debt, as shown through them removing the default they recorded from her credit file, which in her opinion shows they'd accepted she was the victim of fraud.

Mrs C made a complaint to HSBC, which they rejected in October 2017. They don't think a fraudster would've been able to set up two savings accounts, transfer the deposited funds to her current account and then spent those funds without her awareness or consent. They deny agreeing to close her accounts without holding her liable for the debt.

Unhappy with HSBC's response Mrs C brought her complaint to our service. An investigator looked into her concerns but decided not to uphold it. They found:

- The Payment Services Regulations 2009 are relevant to her complaint. They say HSBC should not hold Mrs C liable for any transactions she didn't authorise. This means they shouldn't pursue her for the debt if she didn't give her consent to the payments out of her current account, which represented the fraudulent funds.
- Mrs C likely gave her consent to the transactions which went out of her current account. It was unlikely someone could've obtained both her debit card and PIN, and her online banking log-in details. Both these things would've been needed to set up the two later savings accounts, transfer the deposited funds to her current account and then make the payments from it.
- Mrs C debit card chip was unlikely to have been successfully cloned, as we are yet to see any cases brought to our service where this has happened. It's more likely the

card she says was in her possession when the transactions took place was used to make the ATM withdrawals and point of sale transactions. So, someone would've needed to take and replace her card on multiple occasions without Mrs C noticing. But this is unlikely. She's confirmed she never wrote down her PIN or let anyone else use her card and PIN. And she doesn't know anyone who could've had access to her card without her knowledge.

- Some of the payments Mrs C disputes were made in shops where she'd made genuine transactions in the past, and many other transactions were made in the areas Mrs C regularly used her card. This points to it being Mrs C who made those transactions.
- To open the two savings accounts someone would've needed Mrs C's online log-in security information and a physical secure key to generate a security code. But even if a fraudster had this information, it's unlikely they'd chose to transfer the funds to her current account and risk making her aware of what was happening. It's more likely they'd have transferred the funds out of the savings accounts Mrs C says she didn't know about.
- Mrs C looks to have discussed agreeing a settlement figure with regard to the total debt she owes HSBC, which included the overdraft debt. So, while she says she's always disputed the overdraft debt, this seems unlikely if she was prepared to pay it back as part of a repayment plan. HSBC's records don't indicate they'd agreed to clear the debt. Instead they indicate they'd agreed to stop pursuing her for the debt for a period of time due to her medical circumstances.
- Mrs C's account history demonstrates she used her current account regularly, so not using her account for three weeks would be unusual for her. She says she used a current account she held with another bank during this time. But the statements for that account don't establish this was the case. They show she didn't spend on the account until nine days after the first disputed point of sale transaction.

Mrs C strongly disagrees with the outcome the investigator reached. She has asked for an ombudsman to make a final decision on her complaint, so it's been passed to me to decide.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, my review of the evidence has led me to the same overall conclusions as the investigator previously set out and for broadly the same reasons.

There are two main aspects I need to consider in order to decide Mrs C's complaint. The first is whether I think she gave consent to the payments made from her current account which represented the fraudulent funds that were deposited by cheque. And the second aspect is whether I think HSBC had previously agreed to clear the overdraft debt and not pursue her for it.

Did Mrs C give her consent to the payments out of her current account?

I've listened very carefully to the points Mrs C has made, and how adamant she is that she's the victim of a sophisticated fraud. I'm also aware of what she's told us about her medical condition which has been affected by being chased for a debt she says she isn't responsible for.

Firstly, I'm sorry to hear about Mrs C's medical situation and I appreciate how being pursued for a large debt could make things worse for her. But what I've looked into is whether I think it was fair and reasonable for HSBC to conclude she made the payments she disputes, and following this, whether it was fair to hold her responsible for the resulting debt. What I can't hold HSBC responsible for is the demeanour or way in which the company who now owns the debt is pursuing her. This would be something to complain to that company about.

The PSRs 2009 are relevant to Mrs C's complaint. The regulations mean HSBC cannot hold Mrs C liable for payments she didn't authorise. It's not possible to know for certain who made the payments and set up the two savings accounts. But this isn't what's required of me to decide Mrs C's complaint. The measure I need to decide things by is what do I think is more likely than not to have happened. And on balance, I think Mrs C is more likely than not to have given her consent to the payments out of her current account. I'll explain why.

- I don't think a fraudster would've risked transferring the funds to Mrs C's current account. They could've more easily transferred the funds out of the savings accounts set up in her name, which would've avoided the possibility of her seeing the funds go into her current account. I think it's telling the funds weren't spent quickly, which again would seem odd for a fraudster to do, as this further increased the risk of Mrs C becoming aware of what was happening.
- A fraudster would've needed to have compromised Mrs C's online security information, obtained access to her physical card and to have known her PIN. It's possible a hacker could've captured some of Mrs C's online security information by targeting the device(s) she used to log on to her account. But this still doesn't account for how they managed to obtain her PIN to use with the physical security key in order to set up the two savings accounts. So, I think the fraud being performed through hacking is unlikely.
- I think Mrs C's physical card was used to make the transactions. I say this because while it's possible to clone a magnetic strip, it's actually much more difficult to clone a chip. And our service isn't currently aware of any situations where a card and chip has been successfully cloned outside of a laboratory setting.
- Mrs C says her PIN was never written down, but it's possible someone could've seen her use her card and PIN and kept a note of her PIN. Mrs C, however, still had her card during the period the transactions took place, so that same person would've needed to have had access to take and replace her card on multiple occasions, which I think is unlikely.
- Mrs C says her HSBC current account wasn't her main account, but I'm not persuaded by this. HSBC's records show she used the account regularly and it would've been unusual for her not to have used it during the time the transactions took place. Her statements from her account with another bank also don't demonstrate a great deal of activity on that account during this time.
- Many of the disputed transactions took place in areas where Mrs C frequently shopped. And some of those transactions were made in shops she made payments

in before. I think this points to the payments more likely being made by her or by someone using her card with her consent.

Did HSBC previously agree to clear Mrs C's debt?

I don't think HSBC did agree to clear Mrs C's debt. I see they removed the default they registered, but I don't think this establishes they accepted she'd been the victim of fraud. Their actions instead show they no longer owned the debt, but another company did. It wouldn't be fair for instance for two companies to have active default markers registered against her for the same debt.

HSBC have provided records of the communication they've had with Mrs C since they made her aware of the activity on her account in late 2014. But none of those records show they'd agreed to clear the disputed debt, or that they'd accepted Mrs C's version of events. What I can see is that they'd agreed not to pursue her for the debt for a period of time based on what she'd told them about her medical circumstances. But I don't think HSBC agreed this was to be a permanent debt solution. So, I'm not going to direct HSBC to clear Mrs C's debt which is currently owned by another company.

My final decision

For the reasons I've explained above I've decided not to uphold Mrs C's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs C to accept or reject my decision before 8 February 2020.

Liam King
Ombudsman