

complaint

Mr C complains that HSBC Bank Plc is holding him responsible for a debt arising from some disputed transactions on his account. The bank has closed Mr C's account and recorded adverse information on his credit record. Mr C says he is the victim of fraud and wants HSBC to provide him with banking facilities, remove the information on his credit record and resolve the issue of the disputed transactions.

background

Early in October 2012, Mr C says he discovered a number of transactions on his HSBC account that he did not make or authorise. He contacted the bank and it initially credited his account with the amount of the disputed transactions. HSBC investigated the matter and rejected Mr C's claim for fraud; so it re-debited his account, taking it overdrawn.

There was some confusion about when HSBC told Mr C about its decision. Early in 2013, HSBC told Mr C that as the amount he owed was not being repaid, it was closing his account and would pursue him for the debt. Mr C says he did not know his claim had been rejected. He says that if he had, he would have made efforts to reduce the amount he owed.

Mr C was upset when he was contacted by the bank's collections and debt recovery agents and contacted HSBC. While the bank put a stop on telephone contact it carried on with its normal debt recovery process. Mr C thought HSBC had not properly investigated his claim for fraud – and had not treated him fairly in pursuing the debt while he was complaining about the poor service he had received from the bank. He referred the matter to this service.

Our adjudicator did not think HSBC had done anything wrong – in terms of rejecting Mr C's claim for fraud and continuing with its normal debt recovery process. The adjudicator was satisfied that Mr C was responsible for the debt, so HSBC was able to pursue him for the money owed – and to record this with credit reference agencies. The bank's decision to close Mr C's account was a commercial one.

But the adjudicator did think the bank had not investigated the disputed transactions as quickly as it could have done and recommended HSBC pay Mr C £100.00 compensation. Mr C did not agree with this view, so the matter has been referred to an ombudsman for a final decision.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. Having done so, I have reached the same conclusion as the adjudicator.

There is little I can add to what the adjudicator has already said. He set out the position clearly and I struggle to see how Mr C could think I would come to a different conclusion.

In many respects, this case rests on whether HSBC is right to hold Mr C responsible for the disputed transactions. The other issues flow from that. I cannot say who carried the transactions out. But I consider it most likely that Mr C did.

The transactions took place at a gambling venue where Mr C had used his card on several occasions before. He has said he was there on the date in question but did not use his card and left before they were made. HSBC's records show the transactions were carried out using Mr C's real card (as the chip embedded in it was read) and his PIN was entered correctly. Mr C has indicated his PIN may have been written down and with his card, but he cannot be certain.

Mr C still had his card when he reported the disputed transactions to the bank. This would mean a fraudster would have had to take his card from his wallet and replace it without Mr C noticing. Nothing else was taken from his wallet. If Mr C had not written down his PIN, the fraudster would need to see (and remember) the number when Mr C was using the card – and he did not use it at the venue on the date in question.

While I accept a fraudster may have seen Mr C's PIN on one of his previous visits to the venue, I do not think this is likely. I consider the combination of the above points to Mr C carrying out the transactions himself. HSBC clearly believes he did and questioned his reasons for bringing the complaint.

There do appear to be gaps and delays in its communication with Mr C. He suggests that had he known about his claim for fraud being rejected, he would have made efforts to reduce the amount he owed the bank. I am not persuaded he would have done so. His account records indicate that he did not have the funds to make any payments. So, I do not believe HSBC has done anything wrong by recording Mr C's debt with credit reference agencies.

But that does not mean the bank handled the matter as well as it should have done. It may have been upsetting for Mr C to get letters telling him his account was being closed and from agents pursuing him for the debt. So, I think HSBC should pay him compensation for this. I agree with the adjudicator that £100.00 is appropriate. It would be reasonable for the bank to use this to reduce the amount of money Mr C owes.

Whether a bank provides a customer with banking facilities – and on what terms – is a commercial decision and not one this service would normally become involved in. HSBC gave Mr C notice it was going to close his account. So I see no reason to ask the bank to change its decision about doing so.

I know Mr C will be disappointed with this, but I do not believe I can fairly direct HSBC to refund the disputed transactions, remove any adverse information it may have placed on his credit record or to provide him with banking facilities. But it should pay him a small amount of compensation for the upset he has been caused by the communication issues with the bank.

my final decision

For the reasons I have given, my final decision is that I uphold – in part only – Mr C's complaint and order HSBC Bank Plc to pay him £100.00 compensation. The bank may use this award to reduce Mr C's debt to the bank.

Andrew Davies
ombudsman