

complaint

Mr P complained about 76 debit transactions, totalling around £1,500, which took place on his HSBC UK Bank Plc debit card between November 2017 and March 2018. Mr P said he didn't authorise them. He wants HSBC to refund them and pay him £115,000 compensation.

background

In May 2018, Mr P rang HSBC and said that he was disputing 76 withdrawals from his account. HSBC raised a complaint, but said it would have to cancel Mr P's debit card before it could raise a fraud investigation. Mr P said he needed access to his money, and this would put him in a difficult position. HSBC issued a final response on 29 May, which said that it couldn't raise a fraud investigation without cancelling the debit card.

There were further phone calls between HSBC and Mr P. They discussed when Mr P had realised there was a problem, and how the debits might have come about. Mr P told HSBC that he'd first discovered fraudulent transactions after his bank statements went missing in 2017. He suspected his former flatmate, who'd shared accommodation with him from 2009 to June 2016, and who had moved to a different flat within the building. Mr P said the former flatmate could have accessed the correspondence through a common landing.

Mr P also told HSBC that he'd gone abroad for the birth of his daughter in November 2017, and when he came back he thought his balance wasn't as high as it should have been. He also said he'd left his debit card in a taxi around that time, and the taxi driver had run after him to return it.

In February 2018 Mr P had taken out a loan with HSBC. He told the bank he'd done this because he was running out of money, but at that point he didn't know about the fraudulent transactions on his account. He'd only found out when he'd requested copies of his statements in April 2018. He'd then seen the fraudulent transactions, and that was why he'd phoned HSBC in May 2018.

HSBC refused to refund Mr P for the transactions he said were fraudulent. It said that:

- there were undisputed transactions on the same dates as the chip and PIN ones which Mr P had disputed;
- Mr P had made transfers from a savings account, and had taken out the February 2018 loan, to cover the money withdrawn. Mr P said that the loan was to sustain him while travelling, because his balance was low but he hadn't at that point realised there had been fraudulent transactions;
- HSBC couldn't see why Mr P hadn't queried the transactions earlier. He'd made bank payments using internet banking throughout this time. So HSBC said he'd have been able to see the disputed transactions;
- Mr P had said he'd always had his card with him, except during a period in hospital when it was in a storage room. He didn't know how his ex-flatmate could have accessed the card, or known his PIN, which he didn't write down.
- HSBC told Mr P that the majority of transactions had been carried out with the genuine card and PIN, and it couldn't see how Mr P hadn't noticed the transactions. So it said that if Mr P hadn't authorised the transactions, it must have been someone else who could have taken the card then returned it. It advised Mr P to contact the police as this was a criminal matter. But it wouldn't refund the disputed transactions.

Mr P wasn't satisfied and complained to this service.

The investigator didn't uphold Mr P's complaint. She explained the relevant regulations, which are the Payment Service Regulations 2009 and the Payment Services Regulations 2017. She then considered whether the disputed transactions had been authorised by Mr P, and what would be fair and reasonable in the circumstances of the complaint.

The investigator looked at options:

- She said it was unlikely someone unknown to Mr P carried out the transactions without his consent – because there was no explanation for how such an unknown person could have accessed the card on so many occasions, especially when Mr P was in multiple different countries.
- She considered whether someone known to Mr P had carried out the transactions without his consent. This too seemed unlikely, because they'd have had to have accessed the card and returned it without Mr P's knowledge.
- So the investigator considered it was most likely that Mr P had authorised the transactions himself.

Mr P didn't agree. He sent a long and detailed reply. His key points were:

- The disputed transactions had been a mix of chip and PIN, contactless, online and international payments. Mr P said he didn't see how he could argue about chip and PIN transactions without police evidence that they'd been made by someone else. So he listed the other transactions, and his comments on them.
- He wasn't satisfied that when he first reported the problem in early May 2018, HSBC had said it couldn't investigate without cancelling the debit card. Mr P said an investigation could have started in parallel.
- Mr P said he hadn't realised there had been fraud until he received the statements in April 2018. He believed that HSBC's fraud team should have alerted him to the fraudulent transactions before then, and he said there was an obvious lapse in fraud protection measures by HSBC. This was especially because some of the transactions took place abroad.
- Mr P believed that HSBC's complaint handling process was not "*robust, fit for purpose and focused on resolution.*" He was unhappy that the investigator didn't comment on HSBC's complaint handling processes.
- One of the disputed transactions concerned a hotel stay. The investigator had contacted the hotel, which had confirmed that someone had booked a room in Mr P's name. But Mr P said that there was no requirement to prove identification when booking online, and he'd never stayed there.
- Mr P said it was irrelevant that he was using savings and a loan to fund the cost of living. He said he hadn't realised about the transactions because he hadn't expected there to be any irregularities on his account.

my findings

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

Mr P has raised multiple points in his submissions to the service. I've understood and looked into all of those, but I've commented on what I think is vital to my conclusions. I'd also point out that during the course of this complaint, Mr P raised another, different, complaint about HSBC. That's being dealt with separately and doesn't form part of this final decision.

Regulations

The relevant regulations under which I have to consider Mr P's complaint are, as I've set out above, the Payment Services Regulations. The 2009 regulations apply to Mr P's disputed transactions prior to 13 January 2008 and the 2017 regulations apply to those after that date. In both cases, the key issue in Mr P's complaint is whether or not he authorised the transactions. There are some exceptions in the regulations, but generally Mr P is liable for transactions he authorised, and the bank is liable for transactions which he didn't authorise.

The pattern of disputed transactions

The transactions disputed by Mr P started in November 2017. As Mr P agreed, there's a mixture of chip and PIN, contactless, online and international payments. The statements show that the transactions Mr P disputes are mixed in with ones which he doesn't dispute. So, for example:

- on 7 November 2017 there's an undisputed contactless payment at 12.48, then two disputed chip and PIN transactions at 12.52 and 12.59, then an undisputed chip and PIN at 13.08. There's then another disputed chip and PIN payment at 14.31 and an undisputed contactless payment at 15.39;
- on 18 February 2018 there are three undisputed chip and PIN transactions between 12.58 and 13.13, then five disputed chip and PIN transactions between 13.30 and 13.57.

There are very few days when there are disputed transactions but no undisputed transactions.

It's also clear that Mr P was travelling abroad a lot during this period, to a number of different countries. The disputed transactions take place in the same cities or locations abroad as Mr P was carrying out undisputed transactions during the same period.

Possible explanations for who authorised the disputed transactions

Banks keep computer records of authentications, and Mr P's genuine card and PIN number were used for Mr P's disputed chip and PIN transactions. So whoever made the withdrawals knew Mr P's PIN number and had access to his card. Mr P never reported his card lost.

And the pattern I've set out above, with disputed and undisputed transactions very close together, means it's very unlikely that the disputed transactions were carried out by a third party without Mr P's knowledge. That's because any such individual would have had to have access to the card and PIN, and have been able to take these, unknown to Mr P, and then return the card again, also without Mr P knowing. And this would have had to happen not once but lots of times.

I also note that the undisputed and disputed transactions on Mr P's account took place in many countries. I find that it's even more unlikely that an unauthorised third party could have followed Mr P's travels, which they'd have had to do in order to carry out the stealing and returning of the genuine card.

At various points, Mr P has suggested the transactions might have been carried out by his former flatmate, or by the UK taxi driver in whose taxi he briefly left his card. I don't consider

these individuals would have followed Mr P's travels and been able to take and return his card regularly.

I recognise that in his reply to the investigator's view, Mr P said he didn't see how he could argue about chip and PIN transactions without police evidence that they'd been made by someone else. But I consider it's most unlikely that one person fraudulently carried out the chip and PIN transactions, and a different and unconnected person fraudulently carried out the contactless, online and international payments.

Taking all these factors into account, I find that it's more likely than not that Mr P carried out the disputed transactions himself.

Mr P's specific arguments

Dealing with the other main arguments which Mr P raised in his reply to the investigator:

- Mr P said that HSBC should have started to investigate the fraud without requiring his debit card to be stopped. Banks are entitled to set their own security procedures. This service wouldn't interfere with these. But in any case, I consider it's entirely reasonable that a card which has allegedly been compromised, should be stopped and reissued with a different number. I find it surprising that a customer who's reporting fraud wouldn't want to stop any further possible frauds, even if being without a card for a few days might cause minor inconvenience.
- Mr P argued that HSBC's fraud team should have alerted him to the fraudulent transactions before he found out about them in May 2018. He said he shouldn't have to prove that transactions were fraudulent and unauthorised, especially when they were overseas. He's said that lapses in fraud protection measures on his account were obvious. I don't agree. The transactions which Mr P disputed used the genuine card, and were mixed in with ones he says were genuine so there was nothing obvious to flag them as fraud. I also disagree that HSBC should have acted any differently about the disputed overseas transactions. Mr P has said that he had to notify HSBC before departure so the locations were on the system. And all the disputed overseas transactions were mixed in with undisputed ones, so there was nothing intrinsically suspicious about them.
- Mr P believed that HSBC's complaint handling process was not "*robust, fit for purpose and focused on resolution.*" This service's focus is on the primary issue – in Mr P's case, the allegation that 76 transactions were fraudulently carried out by someone else. We don't carry out investigations into a financial organisation's processes. That's the role of the regulator, the Financial Conduct Authority.
- Mr P said that he never stayed at the hotel to which one of the disputed payments was made, and that there was no requirement to provide photo identification when booking online. I've seen the hotel's confirmation to the investigator that the transaction on 6 November 2017 for £528 was taken as a deposit for a booking. This says that the booking was in the cardholder's name. It makes no difference whether or not Mr P did or didn't eventually stay at the hotel.
- Mr P said it was irrelevant that he was using savings and a loan to fund the cost of living. He said he hadn't realised about the transactions because he hadn't expected there to be any irregularities on his account. I don't consider this argument is

reasonable. All customers are required to monitor their accounts. Mr P didn't report the alleged fraudulent transactions until May 2018, even though some went back to November 2017. I recognise that Mr P has told us he was in hospital for a while during the period, but that by no means covers the whole time. I also consider that anyone who found their total balance was less than they'd expected, would have looked into their account in more detail to see what was wrong, even if they didn't normally fulfil their obligation to do so. So I find that the fact that Mr P was paying money into his account, which covered the cost of the outgoing disputed transactions, means it's likely he knew what was happening.

Taking all these factors into account, I consider it's most likely that Mr P authorised the disputed transactions himself.

my final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 April 2020.

Belinda Knight
ombudsman