complaint

Mr K complains that HSBC Bank Plc transferred money in his personal current account in part repayment of a large debt which had arisen on his business account. The bank agreed to transfer the money back but Mr K also complains that the bank is wrong to continue to hold him responsible for the debt on his business account.

background

The large debt on the business account arose when fraudulent cheques were paid into it. The credits were reversed when the cheques bounced. But meanwhile purchases to the exact amount of the credits had been carried out using the debit card and PIN for the business account. Mr K denied being responsible for the purchases, saying he was abroad. He thinks someone at the bank has made fraudulent use of the card.

Our adjudicator investigated the complaint. She did not criticise the bank for either transferring the money or for holding Mr K liable for the business account debt. Among other things, she noted one of the purchases made with the card was a car, and Mr K had expressed an interest in setting up a business in cars. She also noted Mr K's mother apparently had Mr K's authority to use his current account while he was abroad. And she noted there was quite a long gap between when the card and PIN were issued for the business account and when they were allegedly first misused.

Mr K did not accept the adjudicator's conclusions, and he asked for this review of his complaint by an ombudsman. Among other things, Mr K has pointed to what he regards as the suspiciously short time between when the fraudulent cheques were paid into the business account and when the card misuse occurred. In his view, this points to it being an 'inside job' at the bank.

The bank has argued (a) Mr K settled his entire complaint when he agreed to the bank's offer to refund his personal current account and (b) Mr K is out of time to complain about the fraudulent use of his business account.

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 do not agree Mr K's complaint is either settled or time-barred. If Mr K's entire complaint were settled, the bank would not be able to pursue him for the debt on the business account. But it is clear the settlement did not cover the fraud issue. And Mr K complained to the bank, within six years, about the fraudulent use of his business account.

It is, however, clear that a long time has passed since the disputed events occurred, which makes it all the more difficult to be sure what happened. I do not agree with Mr K it is suspicious the card transactions could be debited to the business account so soon after the cheques were paid in. The '2-4-6' rule which he quotes – whereby customers can draw against a paid-in cheque after four business days – sets down a minimum standard only. Banks can allow withdrawals sooner if they wish.

I can only reach a conclusion on the balance of probabilities. Is it more likely that bank staff made fraudulent use of Mr K's card, or is it more likely the card and PIN reached Mr K and

he made or authorised the transactions? It would of course have to be bank staff acting without the bank's complicity – it would make no sense for the bank to create a large, disputed debt owed to itself that might turn bad.

I am sorry to disappoint Mr K but I think it is much more likely than not that the card and PIN reached him and that he made or authorised/facilitated the disputed transactions. I can in particular think of no reasonably plausible explanation for the time lag between when the card and PIN were posted and when the alleged misuse occurred. And there is no evidence whatever of fraud at the bank.

I stress that I have come to my conclusion based on the limited information available. If Mr K rejects this decision and the bank takes him to court to recover the debt, he will be able to repeat his arguments to the court.

my final decision

I do not think the bank has acted wrongly in this case.

Roger Yeomans
ombudsman