

complaint

Mr C complains that HSBC UK Bank Plc (“HSBC”) won’t refund disputed transactions made from his debit card and online banking. He also complains about a cheque that was deposited into his account.

Mr C has brought his complaint via a representative, but for ease of reading I’ll refer to all submissions as having come from Mr C himself.

background

The detailed background to this complaint is well known to both parties. So I’ll only provide a brief summary here.

Mr C disputes several transactions made relating to an account he held with HSBC. These transactions are as follows:

- 20 debit card transactions amounting to around £16,000 (from 1 October to 28 October 2018)
- Three online payments amounting to around £19,000 (27 October 2018)
- A £38,463.73 cheque deposited into Mr C’s account (24 October 2018)

Mr C has said the following about the disputed transactions:

- He didn’t make the debit card transactions:
 - His card was in his possession when the transactions happened
 - He didn’t keep his PIN written down, as he had it memorised
 - HSBC have not adequately investigated whether his card’s chip could’ve been cloned
- He didn’t deposit the £38,463.73 cheque into his account
- He didn’t make the online payments
- He didn’t access his online banking facility in October 2018
- He doesn’t have any of his details written down, nor does he have them stored electronically
- He didn’t compromise his security details in any way
- In September 2018, the house he was staying at was burgled. Although nothing was taken apart from some money that was in his wallet – Mr C suspects some of his identification documents could’ve been copied

Mr C has also complained about the way one of HSBC’s branch managers spoke to him in branch about the disputed transactions. He has said the bank manager’s comments were ‘inflammatory’ and ‘misdirected’.

HSBC investigated and decided not to refund the disputed transactions. They said there was no evidence of fraudulent activity for broadly the following reasons:

- Mr C’s debit card was in his possession when the disputed transactions were made
- The disputed transactions were made using Mr C’s genuine debit card

- The card's chip was read, and PIN used
- There haven't been any cases of a card's chip being cloned
- Two of the three online payments were made to a beneficiary with the same name as Mr C
- A third party would not have benefited from depositing a cheque into Mr C's account
- Mr C had accessed his online banking facility during the period of the disputed transactions, so he would've been aware of them

Unhappy with HSBC's decision, Mr C referred his complaint to our service.

One of our investigators didn't uphold the complaint. In summary, she felt unable to conclude that the disputed transactions had been made fraudulently and was persuaded that Mr C likely authorised the transactions. She also felt that the HSBC branch manager had acted reasonably.

Mr C didn't agree with the investigator's findings, so he asked for an ombudsman to consider his case. He maintained that he did not make the disputed transactions

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, I'm not upholding it, for broadly the same reasons as the investigator. I'll explain why.

Generally, HSBC can hold Mr C liable for the disputed transactions if the evidence suggests that it's more likely than not that he made or authorised them himself.

I'm satisfied from HSBC's technical evidence that Mr C's genuine card and PIN were used to make the disputed transactions. And that the payments made through online banking were correctly authenticated. But, the regulations relevant to this case say that is not, on its own, enough to enable HSBC to hold him liable. So, I also need to think about whether the evidence suggests that it's more likely than not that Mr C consented to the transactions being made.

Debit card transactions

I think it would be sensible if I first deal Mr C's comment about HSBC not adequately investigating whether his debit card's chip was cloned. Mr C included in his submissions a link to an internet blog which claims it is possible to clone a chip and pin card. Whilst I accept it's commonly referred to as being relatively easy to produce a "cloned" card by copying information from the magnetic stripe on a card, producing a copy of a chip is something that is far more difficult (if at all possible). This service hasn't seen a case so far where the chip has been successfully cloned and used in the UK. I've not seen any further evidence (beyond Mr C's suggestion) that this has happened in this case. The evidence in this case shows that the chip of Mr C's card was read – and physical card presented against readers for contactless payments – for the disputed debit card transactions. Taking all the circumstances of this complaint into consideration, on the balance of probability, I'm not satisfied that Mr C's debit card was cloned.

Mr C has maintained that his debit card was in his possession when the disputed transactions from it were made. So, I've considered whether it's possible that a third party took the debit card and used it to make the disputed transactions.

Having carefully considered this, I think it's unlikely that a third party took the debit card without Mr C's knowledge, made several transactions from 1 October to 28 October 2018, and then returned the card to Mr C by 29 October 2018; when he first spoke to HSBC about the disputed transactions. I find it unlikely that Mr C wouldn't have realised that his debit card was missing during this lengthy period.

To my mind, it doesn't seem plausible that a third party – who effectively took the risk to steal Mr C's debit card – would make several transactions and then take a further risk by trying to return the card to Mr C. It seems more likely that such a person would continue using the card until they no longer could, and then discard it.

So, as I'm satisfied that Mr C's debit card wasn't cloned; wasn't taken and used by another without his knowledge; to my mind, this only leaves one other possible explanation. That is, Mr C either made or authorised another to make the disputed debit card transactions.

I'm particularly persuaded by the two telephone calls that took place on 27 October 2018 between Mr C and HSBC's fraud team. I appreciate that Mr C says it wasn't him who spoke to HSBC during these calls and that he wasn't aware of them. But I think it's more likely than not that it was him.

Mr C called HSBC because of a text message he received from them informing him about unusual activity on his account. During these calls, Mr C answered all security questions asked of him correctly, first time. HSBC also called Mr C back on his mobile phone to complete security. So, I'm satisfied that the call handler was talking to Mr C.

During the first call, Mr C confirmed that several transactions on the day were known to him and genuine. Some of these transactions Mr C now disputes. However, when he was asked about these transactions, he answered:

"I've been trying to book tickets and then sort of take out money as well."

"I've been doing it for a bit. I've been taking out some money [sic] give my mum and everybody, they are all going on holiday."

So, for the reasons outlined above, and taking everything into consideration – I think it's more likely than not that Mr C authorised the disputed debit card transactions.

Online payments

I haven't seen any evidence to suggest that Mr C's online security details were compromised in any way. He himself has said that he doesn't write down his details or store them electronically. Moreover, Mr C has not suggested that he provided his online security details to a third party to make the disputed online payments.

I can see that two of the three disputed online payments made on 27 October 2018 were to a beneficiary with the same name as Mr C. This would suggest that Mr C held the beneficiary account. Indeed during one of his calls with HSBC Mr C confirms that the money sent from his HSBC account was received in his account with another bank. With this in

mind, I think it's unlikely that a fraudster would have made payments to an account held by Mr C, as the fraudster would not have been able to access the funds. It seems more likely that a fraudster would make payments to a third party account that they could then access to withdraw the funds.

The third online payment had the following reference: '*Dads loan*'. Looking at Mr C's statements, I can see that on 22 September 2018, a payment of £8564.00 was made from Mr C's account with the same reference. This suggests that Mr C has made this online payment before, as the same reference was used prior to the period of the disputed transactions.

So again, on balance, I think it's more likely than not that Mr C made or the disputed online payments.

Cheque

Mr C has said he has no knowledge of the £38,463.73 cheque that was deposited into his account on 24 October 2018, which cleared on 27 October 2018. However, I'm not persuaded by this.

During the second telephone call between Mr C and HSBC's fraud team on 27 October 2018, HSBC asked Mr C whether he recognised some credit that that was going into his account. Mr C responded by saying:

"Yep, that is my business. Yeah, that is my business, yep."

I'm satisfied that the advisor was referring to the £38,463.73 cheque. I say this because the proceeds of the cheque were the only funds that were credited to Mr C's account on 27 October 2018.

I can see that before the cheque was deposited into Mr C's account, the balance of the account was almost £500.00 overdrawn. I think this is further evidence of Mr C's awareness of the cheque going into his account. Without the credit from this cheque, there would have been insufficient funds for the substantial amounts of online payments and card spending that followed.

Lastly, I find it unlikely that a third party would deposit a cheque into another person's account without having a way of withdrawing the proceeds of the cheque.

I don't think I need to make a finding on whether or not Mr C deposited the cheque himself. And I appreciate it was deposited to a branch in a town Mr C says he's never been to. But I think the evidence suggests Mr C was aware it had been deposited to his account on the basis of the transfers and spending that followed, which I think most likely Mr C authorised.

Online banking facility

Mr C has said he didn't login to his online banking facility during the period of the disputed transactions in October 2018. However, I'm not satisfied that this is the case. I say this because I can see from the evidence provided by HSBC, that Mr C's online banking facility was accessed multiple times in October 2018 from the same devices used prior to this date. So, I think it's likely that this was done by Mr C. It follows then that if Mr C didn't make the disputed transactions – which I don't agree with – he would've seen them when he accessed

his online banking facility, and likely would've contacted HSBC to dispute them. However, this is something Mr C didn't do.

Customer service

Mr C is unhappy with how a member of staff spoke to him in branch in relation to this matter. As our investigator pointed out, with face to face interactions, it is hard after the event to know with any certainty what happened or exactly what was said.

And I can understand how Mr C might have felt uncomfortable with some of the questions being asked. But HSBC have to ask questions (some of which might feel quite personal) to enable them to investigate any disputed transactions. I think this is reasonable.

And having carefully thought about this matter, I'm not persuaded that there was an intention to upset Mr C. And I don't feel there is enough evidence for me to conclude that Mr C was treated unfairly here. So, I don't think HSBC need to do more on this point.

Taking all the above points into consideration – I find, on balance, that Mr C authorised the disputed transactions. It follows that HSBC is entitled to hold him liable for them. I don't think I need to make a finding as to whether or not Mr C was involved in the depositing of the fraudulent cheque into his account to fairly decide this complaint. I also think it most likely that the HSBC branch manager acted reasonably in the circumstances.

Mr C had expressed a desire to submit medical evidence for my consideration. He says this would have evidenced that he wouldn't have been in a mental state to be able to authorise any of the disputed transactions or to travel to make them. To date this evidence hasn't been submitted, and I've previously extended the deadline for doing so. I also feel that irrespective of what any medical evidence might say, that the evidence is compelling that Mr C authorised the transactions he disputes. So, I'm not persuaded that this evidence he has alluded to would change my mind as to the outcome of this decision. And in any case, I'm satisfied Mr C had a fair opportunity to submit this evidence, but didn't do so.

my final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 7 May 2020.

Richard Annandale
ombudsman