

## **complaint**

Miss M complains that HSBC Bank Plc (trading as First Direct) is holding her liable for a debt on her First Direct account. Miss M says she is the victim of fraud and wants HSBC to refund the money that was in her account before the fraud happened. And she wants the bank to apologise, so she can correct her credit status.

## **background**

Early in 2012, Miss M was contacted by a debt recovery agent about a large amount of money it said she owed. The agent had taken the debt on from HSBC, in respect of Miss M's First Direct account as at the end of 2008.

Miss M contacted both the debt recovery agent and HSBC to say she did not owe any money. The last time she had used her First Direct account (in mid-2008) it had been over £500 in credit.

Our adjudicator investigated the matter and did not recommend Miss M's complaint should be upheld. He was not persuaded the transactions that took the account overdrawn - and therefore created the initial debt - were made by an opportunistic fraudster because, in summary:

- Transactions were made using Miss M's online banking details, which meant the person making them knew her security information;
- Some money had been transferred to Miss M's current account with another bank (Bank A) – Miss M initially confirmed this was a genuine transaction but later said it was not, but only when she was told it was carried out at the same time as a transfer which she had disputed; and
- Miss M had been sent statements on her First Direct credit card for (at least) two months after when she said she last genuinely used it (in mid-2008) – and these statements showed two significant transfers that should have alerted her to unusual account activity.

Miss M did not agree with this view so the matter has been referred to an ombudsman for a final decision.

When rejecting the adjudicator's view, Miss M said he had not taken account of:

- the fact she had given her personal details to members of First Direct's staff on several occasions – the suggestion being that the bank's staff may have committed fraud;
- her inability to access her account on several occasions (which prompted Miss M to change banks) and why HSBC had not sent any texts to her mobile phone;
- why HSBC had not contacted her sooner over suspicious activity on her account – or the money it said she owed the bank; and
- the common practice of fraudsters depositing money in their victim's bank account before trying to make fraudulent transactions to other accounts.

Miss M also questioned the impartiality of this service.

## **my findings**

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision based on the balance of probabilities – that is, what I consider is most likely to have happened in light of the available evidence and wider surrounding circumstances.

Having done so, I have reached the same conclusion as the adjudicator.

In setting out my findings, I consider it helpful to refer to some specific dates and transactions.

I find it difficult to accept Miss M's description of the circumstances of this case. It does seem strange that she decided to stop using her First Direct bank and credit card accounts in mid-2008 – just before the disputed transactions took place. And that a fraudster had access to her online banking security information so those transactions could be carried out.

HSBC has provided copies of the two monthly statements for June and July 2008 on Miss M's First Direct credit card account it says it sent to her home address (which is the same as it is now). I have no reason to believe HSBC did not send these – or any other – statements. I accept that some post does not get delivered but I consider it more than a coincidence that Miss M should happen to not receive these two important documents sent several weeks apart – just as the disputed transactions started.

The June 2008 credit card account statement showed the two transfers to Miss M's First Direct bank account. These took the balance to within a few pence of the limit on the credit card account. It is not clear to me how a fraudster would know what Miss M's credit limit was before making these transfers. And, if what Miss M says is true, the fraudster then made two payments at the beginning and end of July to reduce the balance of the credit card account (as was shown on the July statement). This is a very odd thing for a fraudster to do.

Later statements (August to December 2008) were sent to another address. I do not know when the change of address was made – given the length of time since the disputed activity took place, it is not surprising HSBC does not have complete records. But that (second) address was one on HSBC's records and was also connected with a third party that appears to have benefited from monies transferred from Miss M's First Direct account.

Miss M's credit card account balance was cleared in November 2008. At this point Miss M's First Direct bank account was passed to HSBC's debt recovery section. It appears the interest due on the credit card account was not cleared straight away, so monthly statements continued to be produced (at least up to December).

I do not find Miss M's description of the disputed payment to her account at Bank A on 2 June 2008 to be plausible. Nor do I agree with her suggestion that fraudsters often carry out transfers to victim's other bank accounts as some way of deflecting attention from their other activity. She had not queried the receipt(s) into her account at Bank A at the time.

Miss M initially disputed the payment made on 2 June 2008. But a payment using the same description had been made on 24 April – and she had not queried that. It later became clear these payments were made to Miss M's account with Bank A and she appeared to accept she had made both of them. It was only when the adjudicator told Miss M that HSBC had said the one on 2 June was carried out during the same online banking session as when a disputed transaction (to another party) had taken place that she disputed it (again). This inconsistency in Miss M's story does not help her credibility.

As I said earlier, it does seem strange that Miss M should just stop using her First Direct bank account just as the disputed transactions started. Perhaps more strange is that the account had a credit balance of over £500 at that point. Miss M said she changed banks to consolidate her banking arrangements and I would have expected her to transfer the credit balance to that new bank (or indeed Bank A) rather than just leave it with First Direct.

When I combine all of the above I am not persuaded that Miss M was unaware of what was going on – with either her First Direct bank or credit card accounts. Like the adjudicator, I do not believe the disputed transactions were carried out by an opportunistic fraudster – they were more likely carried out with Miss M's knowledge or authority. So I do not believe I can fairly direct HSBC to take any action to address Miss M's concerns.

That is not to say HSBC could not have handled things better. It is unfortunate that having passed a large debt to HSBC's recovery section in November 2008, it was early 2012 before anybody was able to make contact with Miss M. It is also not clear how HSBC (and its debt recovery agent) came to have another (third) address for Miss M on its records – for a property owned by her and rented out to tenants – when they did make contact.

And HSBC has acknowledged that it inadvertently failed to respond to Miss M's original correspondence in 2013. It is perhaps possible that had Miss M been given the details of all the transactions much earlier, this matter may not have resulted in any complaint at all.

### **my final decision**

For the reasons I have given, my final decision is that I do not uphold Miss M's complaint.

Andrew Davies  
**ombudsman**