

complaint

Miss J complains that HSBC UK Bank plc won't refund debit card transactions that she says she didn't make or authorise.

background

Miss J told HSBC that she didn't recognise a number of transactions made online using her debit card at the end of October and beginning of November 2017. They ended once she reported her card as lost or stolen.

HSBC investigated and has refunded some of the transactions. But it has refused to reimburse ones that were made to a gambling website.

Our investigator thought this complaint should be upheld. He considered it was most likely that it could have been an ex-partner or friend of Miss J's that had managed to obtain her card details to carry out the transactions. He didn't think she had consented to this happening.

HSBC disagreed. In summary, it said that Miss J had been inconsistent and not totally plausible about what had happened. Whilst it accepted that some of the transactions had been carried out by a third party it didn't think that person had attempted all the disputed payments.

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, my review of the evidence has led me to the same overall conclusions as our investigator previously set out and for much the same reasons.

The disputed transactions were made in October and November 2017. The regulations relevant to these are the Payment Service Regulations 2009. In short, the regulations say that HSBC can hold Miss J liable for the disputed items if the evidence suggests that she most likely made or authorised them herself or if they were made possible because she was sufficiently negligent in the care of her card or security details.

So my primary concern is to come to a view about whether or not I think Miss J authorised these payments. But for me to be satisfied whether they were authorised, I first need to determine whether they were authenticated.

Authentication is the use of any procedure by which a bank is able to verify the use of a specific payment instrument, including its personalised security features. I'm satisfied from the evidence HSBC has provided that whoever made the transactions had both the genuine card details and the three digit number on the reverse of the card (CVV). I say this because HSBC has shown that the online merchants have shown that they matched the card details and CVV to Miss J's genuine address.

So I've then thought about whether HSBC has enough evidence to suggest Miss J carried out or authorised the transactions. I can't know for sure what happened in this case so I must make my decision based on the balance of the evidence.

HSBC has already refunded transactions made to two online merchants. It accepts that although Miss J's card was used the purchases were sent to or used by a third party at a different address to hers. The email address used for these was also different to the one Miss J had registered with HSBC and the IP address used to make the purchases was located in the general area that the purchases were delivered to.

When these transactions first took place towards the end of October 2017 an online gambling account was opened in Miss J's name. Her name, address, postcode, date of birth and debit card details, including the last three security digits (CVV) on the reverse of the card, were entered. I'm satisfied that Miss J's address and the CVV were verified at the time. Her date of birth also matched the one recorded in HSBC's records. But, again, the email address given was the one used for the online purchases.

Miss J says that she didn't sign up for this account and she didn't authorise anyone else to. The account was used for transactions totalling in excess of £4,000. HSBC decided not to refund these because the account details matched Miss J's and it found it unusual for an unknown party to using a betting account from which they couldn't profit.

During the time the gambling transactions were taking place, a number of payday loans were applied for in Miss J's name. I have carefully looked at all the details provided for these loans. Whilst Miss J's genuine date of birth and home address were used, the email address is the same one used for the gambling account and purchases. The IP address from which the applications were made was the same as the one used to make the purchases.

Taking everything into account, I don't think Miss J made the payments, opened the gambling account or authorised the payments herself or consented to someone else doing so. The IP address used for the purchases and payday loans is located in the area where the individual that received the goods lives, which isn't in the same area as Miss J's home. The email address given for all the disputed loans and gambling account is consistent and one that Miss J says is not hers. I think it was one that was set up at the time so Miss J was unaware of what was happening. It appears to have been set up using the same service provider as the one used by the person making the purchases, which is different to the service provider for Miss J's email.

Given that the person carrying out the transactions knew Miss J's address and date of birth I don't think they were unknown to her. The last genuine transactions on the account took place on 1 November 2017 when the card and PIN were both used. The first disputed transactions took place three days earlier. These were online and the first few were declined before a £1 payment was authorised. I think this shows that someone was 'testing' the card before a larger transaction took place about 15 minutes later.

I don't think it likely that someone unknown to Miss J took her card and then returned it for her to use. The card was used for genuine transactions in the area that Miss J lived. It was also used online the same day using the IP address located in a different area. I think it is possible that whoever used Miss J's card was well known to her and took the card details, without her consent, possibly without taking the card itself. I say this because Miss J has said that someone might have been able to do this when they were out together or when the card was in her bag at home. They then used the details to make the online purchase and set up the online accounts.

HSBC says that the gambling account wouldn't be of any benefit to someone else, which is why it is holding Miss J liable. Whilst I accept this, I don't consider that the motivation for

gambling is always financial. I think it is more likely that the person who carried out the activity used Miss J's money and ran up debts in her name because they had nothing to lose.

Miss J used the card on 1 November 2017 for genuine expenditure and she reported it lost or stolen on 7 November 2017. She says that she only noticed that it was missing the day before. HSBC told Miss J that the card had been cancelled immediately and that it wouldn't work. Despite this I see that there were further attempts over the following days to use the card both for gambling and online purchases. I think this shows that an unauthorised person was attempting to use the card without knowing it had been cancelled. There were also other payday lenders checking the account after the cancellation date. I don't consider it likely that Miss J would have done this, given that she knew the card wouldn't work.

Whilst I can't say for certain at what point Miss J's card disappeared, I do find, on balance, that it is most likely that someone well known to Miss J took and replaced it before taking it again. I appreciate that Miss J has said that she doesn't know who this person is but I think it must be someone who was reasonably close to her because, not only could they take and replace the card or have access to all its details, but they used her personal details to set up various online accounts. As I've said the IP address used for this activity was located in the area that the online purchases were delivered to. I don't think Miss J would have given her authority to someone to do all of this.

As I'm not persuaded that Miss J authorised the transactions, HSBC should refund all the disputed transactions made using a credit facility.

I have also considered whether Miss J has acted with gross negligence. This means that she must have acted in a way that was beyond negligent – so something more than failing to take proper care. I don't think she has. She hasn't divulged her PIN. I consider someone close to her was able to take her card without her knowledge either when they were out together or from her own home.

Having carefully considered everything, I don't think HSBC has provided enough evidence to show that Miss J carried out or authorised the disputed transactions. So it should:

1. Refund the disputed transactions in full
2. Refund any interest or charges it applied to the account when it was overdrawn
3. Pay interest of 8% simple on the amount refunded from the date of the transaction to the date of the refund (this does not apply for when the account was overdrawn)*
4. Remove any adverse information it has reported about this from her credit file
5. Provide Miss J with a letter confirming it has refunded the transactions in dispute

**HM Revenue & Customs requires HSBC to take off tax from this interest. HSBC must give Miss J a certificate showing how much tax it's taken off if she asks for one.

my final decision

My final decision is that I uphold this complaint. I require HSBC UK Bank plc to put matters right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 27 March 2020.

Karen Wharton
ombudsman