

complaint

Mr K complains that HSBC UK Bank Plc won't refund a number of transactions made from his current account that he says were unauthorised.

background

Mr K says he has a number of current accounts, one of which is this one with HSBC. A number of online gambling transactions took place during March and August 2018, which Mr K says he didn't make or authorise from that account. The transactions were made online, using Mr K's debit card details.

Mr K has told us that he still had his debit card after the payments had been made, he lives with his partner and young child – so no one else could've accessed his card and he doesn't know how his card details came to be used for the disputed transactions. He thinks his Wi-Fi at home might've been compromised in some way.

HSBC think Mr K authorised the transactions. They asked all the betting companies the payments were made to for information. They only got three responses – but the responses they got indicated the information they held matched the details HSBC held for Mr K. HSBC also had a recording of a conversation between one of their branch staff and someone from their fraud team – where Mr K was present and the member of branch staff said that Mr K had confirmed the transactions that are now in dispute, were genuine. They relied on this recording in reaching their conclusion that Mr K had authorised the transactions.

Our investigator considered Mr K's complaint. She said, in summary, she thought Mr K had authorised the transactions. She'd made her own enquiries with the betting companies involved. The responses she got from them, again, indicated that the information they held matched details of Mr K's personal information, the accounts were all opened in 2016 but no betting transactions were made until 2018. She thought it was unlikely a third party would open the accounts in Mr K's name and then not use them for nearly two years. She found one of the gambling accounts was opened using Mr K's driving license.

Mr K didn't accept the investigator's view; I've summarised his response to our investigator's opinion:

- He didn't understand how the gambling accounts could've been opened using his driving license in 2016, because he says he's only had his license since 2017 – when he passed his driving test.
- Mr K maintained that he only ever confirmed transactions he had genuinely made as being genuine – he says he never confirmed the disputed ones were genuine, including during the phone call that took place in the branch.
- He's unhappy that's he's not been compensated for his other losses – for the time and stress this matter has caused.
- He thinks HSBC is hiding information and everything they've said isn't true.

As Mr K didn't agree, the complaint's been passed to me.

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 don't think HSBC have treated Mr K unfairly by refusing to refund the transactions he's disputing. I'll explain why.

Generally, HSBC can hold Mr K liable for the disputed transactions if the evidence suggests that he made or authorised them himself.

information needed to make the transactions

In order for the transactions to have been made, the person who made them must've had access to Mr K's card details. He says the debit card for his account was never lost and there's no one else that could've had access to this information.

Mr K thinks the transactions have been possible because his Wi-Fi has been hacked. But Mr K hasn't provided anything more to evidence why he thinks this. So I think it's more likely that the person who made the transactions did so because they either had Mr K's card itself or because they had the card details. And Mr K says the card has always been in his possession and there's no one else who could've had access to the card. Based on what Mr K has told us, and in the absence of any evidence, I think it's more likely than not only Mr K had access to the card details needed to make the disputed payments.

HSBC has provided evidence of Mr K's online banking history and also its technical record of the transactions. These records indicate that some of the disputed transactions were made using the same IP address as genuine use of Mr K's online banking facility. So whoever made the transactions has done so, from the same place Mr K sometimes uses his online banking.

the call from the branch

Mr K initially told us that he discovered the transactions had taken place when he went to pay for some car insurance and the payment didn't go through. And that he attended the branch to find out what was happening and found out about the disputed transactions then.

I've listened to the call between two members of HSBC staff which took place on 22 March 2018. Although Mr K isn't on the call, I'm satisfied that he's standing close by because at the beginning of the conversation the branch staff member asks Mr K to confirm how to pronounce his surname and he answers her. So I think it's likely he could hear what was being said. And I'm satisfied that it was Mr K that was present during that conversation because the branch staff member said she'd verified Mr K using photo identification and taken a signature.

During this conversation, the member of branch staff says specifically that Mr K had agreed that the payments that had been flagged – the transactions now being disputed - by the bank were all made by him and she also says that the purpose of Mr K's visit to the branch that day had been because he's got a fraud detection marker on his card.

As I say, I think it's likely Mr K could hear all of this being said. He says he only ever agreed that transfers made to his partner were genuine. But transfers to his partner weren't mentioned at all during this conversation. Mr K then contacted HSBC on 24 March 2018 to dispute the transactions.

So I think Mr K did tell HSBC initially that he'd made the transactions he's now disputing, which means he's been inconsistent in what he's said about when and how he discovered the transactions had taken place. And also about whether he made them, by initially saying they were authorised and by later saying they weren't.

online betting accounts

We've received evidence from three betting websites used to make the disputed transactions.

All three websites say the gambling accounts were opened during 2016. Not all at the same time, but within that year. All three websites have also told us that no gambling transactions were made until 2018. Like the investigator, it's not clear to me why someone would open online gambling accounts in Mr K's name, presumably for the purpose of making transactions in Mr K's name, but then not use them for nearly two years.

All three websites have the correct date of birth for Mr K, either his current or genuine previous address and either the email address we've got for Mr K – or one that uses a very similar format and the same numbers as the email address we've got for Mr K. They've all also told us (and one has provided evidence) that they checked Mr K's identity when the accounts were first used and that these checks all returned as matches.

One of the betting companies also provided us with a copy of a letter Mr K had shown them. The letter was from HSBC dated 13 April 2018 – regarding their decision not to refund the disputed transactions. It was addressed to Mr K at the address we have for him. This company said the letter had been provided during a period when Mr K was attempting to re-open the betting account which had been closed when HSBC contacted them to say the transactions to it were being investigated as possible fraud.

Mr K says he's didn't open the betting accounts or make the transactions. But it's not clear to me how this letter could've been provided to the betting company by anyone other than Mr K. And it's also not clear why Mr K would be trying to re-open the online betting account that had been used fraudulently.

Having considered all the information we've received about the gambling accounts, I think it's most likely they were set up by Mr K.

the other bank

When Mr K first contacted us, he told us that he'd moved a large amount of money into his HSBC account shortly before the disputed transactions took place because he'd recently had disputed transactions on an account held with another bank, which I'll call Bank B. Mr K also told us that Bank B had reviewed the fraud claim on that account and agreed to refund him the transactions. After he'd received his refund, Mr K says he moved the money to HSBC because he was concerned it was no longer safe to keep it with Bank B.

We asked Bank B to tell us more about what had happened with that previous incident. Bank B told us that they applied a temporary credit of the disputed amounts to Mr K's account but later took it back from Mr K because they'd decided to hold him liable for the transactions.

As part of Bank B's investigation, they also contacted the gambling companies involved in the transactions Mr K had disputed with them. At least one of those companies had a copy of Mr K's driving license. Mr K says this can't be genuine because he only passed his driving test in 2017, so has only had a driving license since then. But it's possible to have a provisional driving license before passing a driving test so I don't think this makes a difference to Mr K's overall complaint.

the consequential losses

Taking everything into account, I find, on balance, that Mr K authorised the disputed transactions. So I think it's fair that HSBC holds Mr K liable for them.

Mr K says, because of the disputed transactions, he had to sell three cars in order to pay his day-to-day expenses. He'd like HSBC to cover the loss he says this caused - because he had to sell these cars for less than he paid - and a refund of the disputed transactions. But as I don't think HSBC has made a mistake in holding Mr K liable for the transactions, I can't fairly say they're responsible for the losses he describes or to refund the transactions. So I won't be asking HSBC to pay Mr K what he's asking for

transactions in December 2018

I'm aware that Mr K is disputing further transactions that took place on his account in December 2018. We've already explained to Mr K that this would need to be raised with HSBC as this has happened since the events this complaint is about. So I haven't considered the transactions that took place in December 2018.

my final decision

For the reasons I've explained, I don't uphold Mr K's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 November 2019.

Eleanor Rippengale
ombudsman