

complaint

Miss S complains that HSBC Bank plc passed on a debt to a debt collection agency which she says arose as the result of fraud on her current account. She says the bank told her she would not be held responsible for the debt.

background

On 16 April 2008, a cheque for £15,400 was paid into Miss S' current account and subsequent debits of £4,580 were made from the account. On 22 April, this cheque was returned unpaid. Miss S says she was not aware of the cheque until she reported her debit card missing. She says that the last genuine transaction on her account was on 1 March 2008 when she withdrew £20. Miss S says she reported the fraud to the police and completed the forms provided by the bank saying she was not responsible for the spending.

Miss S says that she contacted the bank after November 2008 and it said she would not be held responsible for the debt on her account. She says that the debt was then transferred to a debt collection agency and she is being pursued for this.

The bank says that Miss S came into a branch on 1 May 2008 and said she had lost her debit card and that the PIN was kept in her wallet with the card. It says the decision was made to close the account and transfer the debt on the account to its collections team. Its notes show that Miss S was told her she was liable for the transactions on her account. The bank says it then began to investigate Miss S' allegation of fraud. It says it tried to call her but was unable to make contact so it wrote to her in November 2008 asking her to respond within seven days or it would not be able to proceed with its investigation and no refund would be provided. It says it Miss S did not contact it. It says it held Miss S responsible for the transactions on her account and the outstanding debt.

The bank says that the debt was passed to a debt collection agency in 2011 and that Miss S would have been written to about this at that time. It says that Miss S did not raise this complaint until a number of years after the debt was transferred.

The adjudicator said that in order to uphold Miss S' complaint he needed to be satisfied that someone found or stole her debit card and she did not notice it missing and that this person guessed her PIN and had access to fraudulent cheques. He found this unlikely. Because of this, while he sympathised with Miss S that she was being held responsible for money he doubted she had benefitted from, he did not find that he could ask the bank to buy back and write off the debt.

Miss S did not agree. She said her account was used fraudulently without her knowledge and she reported this to the police. She also said that she could not have carried out the two largest transactions as they took place in clubs that she was too young to enter at the time.

my findings

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

This complaint has been brought to us a number of years after the fraudulent cheque was banked and the disputed transactions occurred. Therefore, the information available is not complete. Where the evidence is incomplete, inconclusive or contradictory, I reach my

decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence.

Miss S says that the last genuine transaction on her account was on 1 March 2008 and that she did not make the transactions that took place after the fraudulent cheque was deposited. While I accept that it is more likely than not that she did not carry out or have the benefit of all the transactions made after the depositing of the fraudulent cheque, whether or not the bank was entitled to hold Miss S liable for the disputed transactions does not, however, turn on whether or not she carried them out.

The transactions made were a combination of cash withdrawals and payments at clubs. The cash withdrawals would have required the person using the card to know Miss S' PIN and this could have also been the case for the payments in the clubs. I have nothing to suggest that the withdrawals and payments were not made using the genuine card and by correct entry of the PIN. While I understand Miss S' comments about how someone might have guessed her PIN, I find it more likely than not that whoever carried out the disputed transactions did so because they had access to Miss S' account either with her consent or because Miss S was negligent with her card and PIN.

Miss S raised her concern in 2008 but then did not stay in contact with the bank while the investigation was ongoing. She says that she was told after November 2008 that she was not being held responsible for the debt however the bank has no record of any contact being made at that time. The only records the bank has, show that it told Miss S she was responsible for the debt. Miss S did not raise her concerns again until a number of years after the debt was transferred. On balance, I find it reasonable that Miss S should have been aware that the bank was holding her responsible for the debt.

Overall, based on the information provided, I do not find that the bank acted unreasonably by holding Miss S responsible for the debt and for transferring this to a debt collection agency.

my final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I am required to ask Miss S to accept or reject my decision before 3 August 2015.

Jane Archer
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