

The complaint

X and Mr W complain HSBC Bank PLC (“HSBC”) refuse to refund them for transactions on their account they say they didn’t make.

What happened

X and Mr W’s complaint is about four disputed transactions on Mr W’s debit card, and one disputed transaction on Mr W’s credit card, which all took place in the early hours of the morning on 25 November 2022.

Mr W says he was on a night out and had been drinking when he was approached by some women offering personal services, whom he was with for the rest of the night. Mr W says he remembers taking out money from an ATM, but he realised a few days later that there were also several transactions on his account he didn’t recognise. Mr W says he thinks he was shoulder surfed when taking money out of an ATM by one of the women who then used his cards without his consent.

HSBC says it has decided to hold Mr W liable for the transactions as they were completed using Mr W’s genuine cards and PINs (except for one transaction which was contactless). However, Mr W confirmed he had possession of both his cards after the event, so HSBC has also held Mr W liable for the contactless transaction.

Our investigator considered this complaint and decided that it wasn’t fair to hold HSBC liable for these transactions. X and Mr W were not happy with the outcome, so the complaint has been passed to me for a final decision.

What I’ve decided – and why

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

My role is to look at all the evidence, and then reach a decision that takes this into account and is fair to both parties. That means I consider HSBC’s position as much as I do X and Mr W’s. And what they are asking for here is for HSBC to use its own funds to pay back money that they say was spent from their accounts fraudulently.

HSBC has provided evidence that shows the transactions in dispute were carried out using Mr W’s genuine card and for all transactions, bar one, the correct PIN was used to authorise these transactions. Mr W told HSBC that he still had possession of his cards after the night in question. He says he thinks one of the women he was with could have shoulder surfed him while he was at an ATM withdrawing cash. However, the first four transactions disputed occurred before Mr W took cash out the ATM, and there were transactions on Mr W’s credit card and his debit card. So, this doesn’t explain how someone else could’ve known Mr W’s PIN to make the disputed transactions, and so it seems more likely they were authorised by Mr W himself.

X and Mr W has questioned why HSBC didn't protect their accounts by blocking these transactions as suspicious – as this is what they expected. The first transaction in dispute was for £1,120. I've looked at X and Mr W's bank statements and I can see several genuine single transactions for around £1000 or more. So, it is not uncharacteristic for a payment of this size on their account so I wouldn't have expected HSBC to necessarily flag this payment as suspicious. However, HSBC says it did block the second card and PIN transaction that was attempted and has produced evidence to show it sent Mr W an SMS questioning whether this was a genuine transaction. The evidence also shows HSBC received a 'Y' (yes) response to this from his registered phone number. So, it allowed this transaction to go through. I think this was reasonable as this confirmed to HSBC that Mr W had his card at this time and so it processed this payment and the payments that followed shortly after.

X and Mr W have also queried how these transactions could've been made using chip and PIN in the early hours of the morning when the shops are all closed. The evidence I have doesn't provide information about the exact location and services the merchants provide. But the evidence is clear that on the fact that the card and PIN were used to authorise these payments, and this is what I have relied on when considering whether I think Mr W authorised these transactions.

Having looked at the facts of this case it seems likely Mr W was taken advantage of and fell victim to a scam while intoxicated. But this doesn't mean he didn't authorise the payments. Mr W says he doesn't remember much of the night, and he had no idea what had happened until a few days later. Mr W maintained that he never allowed anyone else to use his cards and his phone was protected by biometrics and passcode. He also said he never wrote his PIN down or shared it with anyone, and the PINs for his cards and phone are different. So, based on this evidence along with everything else I've seen it seems more likely that he authorised these transactions himself.

I appreciate this situation must have been distressing for Mr W and it's a lot of money, so I do have sympathy for the situation he finds himself in. But based on the evidence I've seen I don't think it is fair to hold HSBC liable for the transactions in dispute. So, I am not upholding this complaint.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask X and Mr W to accept or reject my decision before 27 September 2024.

Sienna Mahboobani
Ombudsman