

The complaint

Mr V complains HSBC UK Bank PLC (“HSBC”) refuses to refund him for transactions on his account he didn’t authorise. He also says he hasn’t been provided statements despite asking and received poor customer service.

What happened

The facts of this case are well known by both parties, so I won’t repeat them in detail here.

In summary, Mr V says he was imprisoned on 22 April 2023. He says he called HSBC to inform it of his position but didn’t have his account number or sort card to hand, and the call handler couldn’t locate his details using his name and date of birth. He then called back on 18 May 2023 and during the call he discovered unauthorised transactions on his account. So, he complained about this, and a new card was ordered for him. Mr V says he thinks his ex-partner is responsible for taking his card from his personal things and using it without his consent.

HSBC rejected Mr V’s claim on the basis that the transactions in dispute were made using his genuine card, and some also required his PIN. And it says there is no evidence of a card and PIN compromise. HSBC says it wasn’t aware Mr V was imprisoned until after the transactions were made, so it doesn’t think it could’ve done anything more to protect his account. It also says it wasn’t made aware of Mr V’s change of address, so the statements and other correspondence were being sent to the old address it had on file. So, HSBC has held Mr V liable for the transactions in dispute and doesn’t think it did anything else wrong.

Our investigator considered this complaint and decided to uphold it. He also awarded an additional £250 compensation for the poor customer service Mr V experienced. HSBC didn’t agree 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.

A consumer should only be responsible for transactions made from their account that they’ve authorised themselves. Mr V said he didn’t give any permission for the transactions in dispute to be made but HSBC believes he did. My role then is to give a view on whether I think Mr V more likely than not authorised the transactions, based on the evidence I have available.

We have obtained evidence to confirm Mr V was imprisoned on 22 April 2023 and was still in prison during the dates of the disputed transactions. I'm satisfied they were not made by Mr V personally as some of these were ATM withdrawals, travel tickets and transactions at local supermarkets, which wouldn't have been available to Mr V in prison. HSBC says Mr V must have given his card and PIN to someone else to use as there is no clear point of compromise. But Mr V is adamant he hasn't. However, he thinks his ex-partner may have taken it from his home and had seen him enter his PIN when they were together. So, I've considered this possibility.

Mr V says his ex-partner is responsible for his incarceration and could've searched through his personal details to find his card and PIN. While the reasons for his imprisonment are unknown and irrelevant to this case, this does suggest to me that they are no longer on good terms. HSBC has provided evidence that Mr V's PIN hasn't been changed since 28 October 2021, so it is possible that his ex-partner had seen him enter his PIN somewhere during their relationship. Also, Mr V refers to his PIN being an important memorable date, so I think someone as close as a partner would remember it after seeing it being entered.

While I have little evidence to support what Mr V has said, his testimony has been clear and consistent throughout and I have no reason to doubt what he has told me. The evidence I've seen persuades me that Mr V couldn't personally have made the transactions, and I think what he has said about his ex-partner knowing his PIN is plausible.

HSBC has analysed the transaction history and pointed out that the activity is not typical of fraud. I've considered the frequency and nature of the transactions, and I agree that they don't look like the actions of a sophisticated fraud group who are knowledgeable of banks processes. However, based on what I've seen and been told it seems likely that these transactions could've been made by someone else who is not a sophisticated fraudster, but has taken advantage of his situation at the time.

HSBC also provided some call recordings of when Mr V called to say his card was being declined at an ATM, and it says Mr V was verified via his voice or telephone passcode. But the call sent in is recorded as May 2022 – which is a year prior to the transactions in dispute. We asked HSBC about this, but no explanation was given about why the call is recorded as 2022, so I think in the absence of an explanation it is more likely that this call took place in May 2022 and is reference to a transaction then which is not in dispute. So, this also does not change my decision.

I have considered whether Mr V was in any way grossly negligent with his card and PIN or failed with intent to keep his information safe. But I haven't been provided any evidence to suggest this. Mr V said his card was in his house and he doesn't *think* he had his PIN written down anywhere as he had always tried to keep his information safe. It is possible that his ex-partner or someone else found his card amongst his things and had seen him enter his PIN previously. But the bar for gross negligence is quite high according to the FCA's interpretation of the regulations - defined as beyond a reasonable standard of carelessness. And I don't think leaving his card at home while he is imprisoned is enough to show gross negligence. So, this doesn't change my decision.

Overall, I've considered the evidence provided by both parties and I am not persuaded the transactions in dispute were authorised, nor am I persuaded that Mr V was grossly negligent in keeping his card and PIN safe. So, I think HSBC should refund the disputed transactions to Mr V.

I've also seen Mr V raised the fact that he hadn't received copies of his statements after asking repeatedly. And he is unhappy about how his complaint has been handled. The evidence shows Mr V's complaint wasn't initially responded to. And this was acknowledged in HSBC's final response letter. I've also seen evidence that HSBC ordered a new card to be collected by Mr V in its Leeds branch, even though during the same call it was informed he has been imprisoned. I've seen evidence that HSBC tried to call Mr V on his mobile on several occasions, after being informed of imprisonment and the fact that he no longer had access to his mobile. And in this situation, I would've expected HSBC to consider Mr V's position and ask him about how best to keep in touch throughout his complaint. Our investigator awarded £250 in compensation for HSBC's failings here, and for all these reasons I think that award is fair.

Putting things right

HSBC UK Bank PLC should refund Mr V all the disputed transactions, plus 8% interest from the date of the payments till the date they are paid back. It should also pay Mr V £250 in compensation.

My final decision

For all the reasons outlined above I am upholding this complaint. HSBC UK Bank PLC should put things right as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 10 January 2025.

Sienna Mahboobani
Ombudsman