

The complaint

Mr D complains HSBC UK Bank Plc are refusing to refund him £4,585.93 which he says was fraudulently withdrawn from his HSBC account.

What happened

I sent the parties a provisional decision in June 2024, in which I set out the following background information to the complaint and my provisional findings, as follows:

Mr D explained he travelled to Europe by himself for a holiday in February 2023. Mr D explained several unauthorised withdrawals were made from his account in the early hours of 22 February 2022. His last genuine transaction was a cash withdrawal from a cash machine in the early evening of 21 February.

Following this last non-disputed cash withdrawal, there are eight further cash withdrawals between 2.11am and 5.21am on 22 February. These withdrawals totalled £4,585.93, including non-sterling transaction fees, at a cash machine in a nightclub. Mr D said he did not visit this nightclub and it was a 10 minutes' walk away from the venues he did visit that evening. Mr D said he had not disclosed his PIN to anyone but explained during his call to HSBC he may have been shoulder-surfed when he withdraw cash earlier on in the evening.

Mr D explained he had only used cash on the evening on 21 February, so did not know when his card was stolen and only discovered his card was missing the next day, he then reported it to HSBC on the afternoon of 22 February.

HSBC explained the withdrawals were made with Mr D's debit card using chip and PIN. It concluded Mr D must have made these transactions or authorised someone else to make the transactions on his behalf.

HSBC explained it considered whether Mr D's PIN had been compromised at the cash machine but determined it had not been. It explained it would be unusual for a fraudster to wait six hours before using a card as they generally withdraw as much as they can as quickly as they can. HSBC recognised it could have provided a better service when Mr D reported the issues and offered £100 compensation for the delay in responding to Mr D.

Our investigator agreed with HSBC. They thought the pattern was inconsistent with fraud and that Mr D had made the transactions.

Mr D disagreed with our investigator's recommendation, his complaint has therefore been passed to me to make a final decision.

My provisional findings

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

The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. So the issue for me to determine was whether it was more likely than not that Mr D carried out the transactions himself. If he authorised someone else to carry out the transactions for him, this would also be considered as carrying out the transactions himself.

HSBC said the withdrawals did not follow the usual pattern of fraud and gave this as a reason for declining the refund. This is because the transactions happened six hours after his PIN could have been compromised.

In his first call to HSBC to report the fraud, Mr D explained he kept his debit card on its own in his pocket and thought it might have been stolen 'at the bar'. He explained the bars he had visited were very busy and he thought it was possible someone had taken his card out of his pocket.

Mr D has said he thinks it was possible someone may have observed his PIN when he took cash out of a cash machine earlier on in the evening. The cash machine used was in a busy area of the town Mr D was visiting. I therefore think Mr D's explanation is plausible and could have been where the compromise occurred.

HSBC's final response and timeframes assume Mr D's debit card was stolen at the same time his PIN may have been compromised. Mr D said he visited several bars following this withdrawal and doesn't know when his card was stolen, so the timeframe could have been much shorter than six hours claimed.

I therefore think it is possible the fraudster may have observed the PIN at the cashpoint and waited for an opportunity to steal his card, which might have been much later in the evening. This could account for the delay.

It is also possible the fraudster waited until the early hours of the morning to make the withdrawals so Mr D would not have noticed the transactions and taken action to stop them.

These are simply put forward as possible alternative explanations to the assumptions made by HSBC in respect of the time taken between the potential PIN compromise and the withdrawals. They are to demonstrate there are many possible scenarios which could have caused the delay between the possible PIN compromise, the theft of the card and the withdrawals.

Whilst I appreciate the comments HSBC made about the timing of the alleged fraud, I have carefully weighed this up against the pattern of withdrawals, once they started to occur, and am persuaded it is more likely than not these follow a pattern of fraud for the following reasons.

Mr D's account was essentially emptied of all funds, taking it several thousand pounds overdrawn, in a matter of a few hours. This has clearly left him in significant financial difficulty, as several utility Direct Debits were not paid. I provisionally think this is in line with what we would expect to see where fraud has occurred, and I consider it inconsistent with Mr D making these transactions.

In all the circumstances of this case, I considered it was more likely than not that Mr D didn't authorise the transactions nor authorise anyone else to carry them out, this is because:

- Over £4,500 was withdrawn in a few hours, taking Mr D well overdrawn and meaning numerous Direct Debits were not paid.*
- Having considered Mr D's statement for the previous 12 months these withdrawals are out of character.*
- Mr D's previous transactions immediately before the disputed withdrawals were low value, demonstrating a different spending pattern prior to the disputed transactions.*
- Mr D has explained an opportunity for a compromise of his PIN earlier in the evening.*
- Mr D explained he kept his card in his pocket and visited busy bars that evening, there was therefore an obvious opportunity for his card to be stolen.*
- Mr D has said he didn't visit this nightclub and only visited bars on the 'strip' 10minutes' walk away.*
- Mr D has said he was travelling alone.*

In summary, I recognise the difficulties when the customer's genuine card and correct PIN are used for disputed withdrawals. It is not always possible to piece together all of the factors which may have led to the fraud and I have to consider the evidence on the balance of probability and consider whether I think the financial institution has proved the withdrawals were authorised. For the reasons I have given, I provisionally do not think HSBC has proved these withdrawals were authorised by Mr D.

My provisional decision and the parties' responses

I provisionally decided to uphold this complaint. I thought HSBC should refund Mr D £4,585.93 for the financial loss. I also thought HSBC should pay 8% simple interest on the positive balance Mr D had on his account before the fraud from 22 February to when the full refund is provided and also refund any evidenced charges or fees caused by Mr D going overdrawn.

I thought HSBC should pay £100 compensation it had already agreed to for the distress and inconvenience highlighted in its final response letter.

Mr D responded to my provisional decision but did not raise any further points for me to consider before issuing my final decision.

HSBC responded explaining it did not agree with all of the points I had made in my provisional decision but to avoid further delays for Mr D, would agree to it as a gesture of goodwill.

Having reconsidered the issues in this complaint, I remain of the view my provisional decision was fair and reasonable and therefore have no reason to amend it.

My final decision

For the reasons I have given, my final decision is I require HSBC Bank UK Plc to refund Mr D £4,585.93 for the financial loss. I also require HSBC Bank UK Plc to pay 8% simple interest on the positive balance Mr D had on his account before the fraud from 22 February to when the full refund is provided. I also require HSBC Bank UK Plc to refund any evidenced charges or fees caused by Mr D going overdrawn.

I further require HSBC Bank UK Plc to pay £100 compensation it already agreed to, if it has not already done so, for the distress and inconvenience highlighted in its final response letter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 26 July 2024.

Gareth Jones
Ombudsman