

The complaint

Miss B complained because HSBC UK Bank Plc refused to refund her for two cash machine withdrawals she said she hadn't authorised.

What happened

On 23 June 2024, Miss B rang HSBC. She said she wanted to cancel her card because she couldn't find it, and she could see payments which weren't hers. HSBC's adviser went through multiple recent transactions on the account. Miss B wasn't sure what she had and hadn't authorised. For example, initially she said she'd made two cash withdrawals on 7 June, for £250 and £50, and had lost her card after that. But she said she hadn't authorised one on 6 June, so the adviser asked how that could have happened. Miss B said maybe she didn't remember. Eventually she agreed that she'd probably lost her card on 7 June.

The adviser cancelled Miss B's card and asked her where she normally kept her card. Miss B said in her wallet. The adviser asked if Miss B had lost her wallet, and she said no. The adviser asked she needed to know how Miss B's PIN could have been compromised, and whether she'd written it down. Miss B said yes, she did. The adviser asked if Miss B had it written down in her wallet. Miss B said she didn't know, but she had it on her phone and also had it written down on other pieces of paper as well, so maybe she had it in her wallet as well. The adviser said she would recredit the disputed transactions.

A few days later, Miss B rang again. She said she'd had refunds for multiple transactions, but there were two transactions which hadn't been refunded. These were for the two cash withdrawals for £250 and £50.

HSBC didn't refund Miss B for these two cash withdrawals. Miss B complained that HSBC didn't refund her, and also complained about the way the fraud team had spoken to her.

HSBC issued its final response letter on 8 July. It said that it was sorry Miss B had felt unhappy with the way she'd been spoken to, but investigating thoroughly could involve asking difficult questions to gather as much detail as possible, and HSBC had followed the correct procedure on Miss B's call.

In relation to the cash withdrawals, HSBC pointed out that these could only have been made with Miss B's four digit PIN. And Miss B had confirmed she'd kept a written record of her PIN, which was a breach of the terms and conditions of her account – and she was solely responsible for safeguarding her PIN. When the complaint handler had spoken to Miss B, Miss B had said she had to write down the PIN because of a medical condition – but HSBC said she could view her PIN on the app at any point and didn't need to write it down. It also sent her a link to register if she had any additional care needs.

Miss B wasn't satisfied and contacted this service.

Our investigator didn't uphold Miss B's complaint. She said that the disputed withdrawals were made using Miss B's genuine card and PIN. So if Miss B hadn't made them, someone else would have had to know her PIN. Miss B had confirmed she'd written down her PIN,

and she may have kept it with her card. Miss B had said she wrote down her PIN because of a medical condition. HSBC had suggested viewing it on the app, but Miss B had said she wasn't good at technology. But the investigator saw from Miss B's mobile banking record that she accessed her online account regularly.

The investigator also said that she'd have expected Miss B to have reported the disputed transactions earlier. The investigator also said she couldn't see why HSBC had refunded the other disputed transactions. HSBC hadn't replied when she'd asked this, and the investigator said HSBC had gone above and beyond what this service would have recommended in the circumstances.

Miss B didn't accept this.

She said she thought she'd have known if she had let someone use her card or had made the transactions herself. She suggested it might be a data breach by HSBC, because it was a multimillionaire company and wouldn't pay £300 to someone struggling for their rent. Our investigator replied that the cash machine withdrawals couldn't have been a breach of HSBC's data because they were made using the genuine card and correct PIN.

Miss B then said that it was months ago that she'd written the PIN down, and the paper probably ended up in the bin. She asked whether, if she said "no I didn't write the PIN down", the money would instantly come back to her?

Miss B said she knew her rights weren't being respected. And she'd made a police report so how could the investigator say she did the transaction herself. She said that *"everyone is acting like these terms and conditions are the Holy Bible, but can't believe this matter is decided by if or if I didn't write 4 digits on a piece of paper, something no-one would ever remember anyway."*

Miss B asked for an ombudsman's 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.

What the Regulations, and terms and conditions, say

The outcome of a disputed transaction complaint is governed by Regulations, and by the terms and conditions of the account.

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. The regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure to such an extent that it can be termed *"gross negligence."*

The Terms and Conditions are what Miss B agreed to accept when she opened her HSBC account. Section 2 sets out that *"you must be careful to keep your security details private"* and goes on to list what this means. The list includes *"passwords, personal identification numbers (PINs), security codes, and memorable data."* It goes on to say *"We'll do all we reasonably can to keep your account secure. You must also help us to do this. This includes keeping your details safe, and keeping us up to date if you notice something doesn't seem right."* And under the heading "Security details", it says *"Don't write down your security details in a way that other people would easily understand."*

The Regulations, and the terms and conditions, mean that what I have to consider in determining the outcome is:

- whether it's more likely than not that Miss B, or a fraudulent third party, carried out the disputed transactions; and
- whether Miss B complied with the terms and conditions of her account in keeping it safe.

Is it more likely than not that Miss B, or a fraudulent third party, carried out the disputed transactions?

I've listened to the phone call when Miss B reported the dispute on 23 June. Miss B was extremely uncertain about which transactions she had and hadn't carried out herself. As I've set out above, she specifically said that she had made two cash withdrawals on 7 June, for £250 and £50, and had lost her card after that. It was only after the call handler asked how in that case she was saying she hadn't made the cash withdrawal on 6 June, that Miss B then said maybe she didn't remember. There's no clarity on the call about which transactions Miss B was and wasn't disputing.

And it was only a few days later, after HSBC had refunded some of the disputed transactions, that Miss B said she hadn't been refunded for the £250 and £50 withdrawals, and said she hadn't made those and wanted them refunded as well. So Miss B changed her evidence about whether she'd made these herself.

I've also borne in mind that Miss B didn't contact HSBC about fraudulent transactions until 23 June, although she eventually said she'd lost the card on 7 June. I've seen from computer evidence that there were multiple log-ins between 7 and 23 June, so Miss B would have seen the disputed transactions well before 23 June. So it's very surprising that Miss B didn't report the disputed transactions much more quickly than she did.

Taking these factors into account, I think it's more likely than not that Miss B carried out the disputed transactions herself. This means that HSBC doesn't have to refund her.

Did Miss B comply with the terms and conditions of her account in keeping it safe?

I've set out the terms and conditions above, in relation to keeping her account details safe. Miss B has made it clear that she doesn't think the terms and conditions matter. But they do. They set the rules for how the account will be run – and Miss B agreed to accept these when she opened the account. So it's not open to her to say that it doesn't matter that she wrote down her 4-digit PIN, which the terms and conditions forbid. I find that she didn't comply with the terms and conditions of the account.

The reason why it matters not to write down or otherwise disclose the PIN is that it makes it possible for a fraudster in possession of the card to steal money from the account. There are 10,000 possible combinations of a four digit number, so it's not possible for anyone correctly to guess a PIN. Miss B said she had a medical condition which meant she had to write down a PIN, but I'm not persuaded by this, because HSBC suggested using the PIN-reminder on its secure app. Miss B's account shows that she regularly used technology to access her account, so this would have been a practical alternative if she couldn't remember it.

In practice, I've found it more likely than not that Miss B carried out the disputed transactions herself. But even if she didn't, I consider that writing down her PIN and keeping it in the wallet with her card would also mean that HSBC didn't have to refund her.

HSBC's handling of Miss B's calls and complaint

Finally, I've also considered Miss B's complaint about HSBC's handling of her calls and complaint. I've listened to call recordings. I find that HSBC's call handlers did treat Miss B with respect. They asked her relevant questions necessary for a disputed transaction claim. And they were very patient when Miss B couldn't tell them whether or not she'd made the various transactions she had phoned in order to dispute.

I also don't accept Miss B's suggestion that the two disputed withdrawals happened because they were a data breach by HSBC. As our investigator explained, the withdrawals are factually based on the evidence which shows that they had been made using the genuine card and correct PIN.

I've also considered Miss B's comment that she'd made a police report, so how could it be said that she did the transaction herself? First, in the call where Miss B reported the disputed transactions, the call handler asked whether she'd made a police report and she replied that she hadn't. I appreciate that she may have done so subsequently. But in any case, reporting an allegation to the police, with no evidence of what the police found, doesn't prove anything either way.

I also agree with our investigator that Miss B was very fortunate that HSBC refunded the other disputed transactions. As HSBC did so, I'm not required to make a finding on those other disputed transactions, but I consider that HSBC acted generously when it did so.

So my final decision is that I do not uphold this complaint.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 13 January 2025.

Belinda Knight
Ombudsman