

The complaint

Mr W complains HSBC UK Bank Plc trading as first direct didn't do enough to protect him when he became a victim of fraud.

What happened

Mr W has a number of accounts with first direct – including a joint account – and has a debit card and a credit card.

On 20 December 2022 Mr W called first direct to say that he'd noticed a number of suspicious transactions when he'd looked on his online banking. He said he'd been in a pub the previous evening and that someone had managed to get hold of his wallet and might have taken his mobile phone too and later returned it. He said he'd been the victim of fraud.

First direct investigated Mr W's claim and said that it couldn't do anything about transactions which were listed as "pending" until they went through and that a number of transactions hadn't gone through as they'd been reversed. Having investigated fully, first direct said that it was going to hold him liable for the transactions that went through. Mr W complained and ultimately came to us.

One of our investigators looked into Mr W's complaint and said that they didn't think first direct had acted unfairly as there was no obvious point of compromise or explanation as to how someone else had managed to carry out the transactions. Mr W was unhappy and asked for his complaint to be referred to an ombudsman. Our investigator arranged this. In the meantime, our investigator asked Mr W whether or not he'd like to include the payments from his joint account as this would need the other account holder's consent. Mr W didn't say either way. So, his complaint was passed to me.

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.

I've listened to the call that Mr W made the day after the transactions he disputed took place, and to subsequent calls too. I'm satisfied that the transactions that Mr W reported as fraudulent had been made using his genuine card and PIN and that his mobile app had been used to complete internal transfers and make payments to an external account. I'm also satisfied that Mr W's mobile app was used to view his PIN – after some of the disputed transactions had already occurred – and that this couldn't have been done without access being given to the device on which his mobile app was registered to.

Mr W disputed in total £11,960's worth of transactions. I'm satisfied, however, that this total includes £2,000's worth of those transactions from his joint account. I've not looked into those transactions – as we haven't heard from the other account holder. In this decision, in other words, I'm focussing on the transactions Mr W is disputing from his sole accounts. In other words, £9,960's worth of transactions.

First direct says that it investigated Mr W's claim but didn't offer him a refund as there was no good explanation as to how his PIN and mobile app could have been compromised. Mr W has since told us that he believes his drink was spiked and he has very little recollection of the evening – that he believes he was led away from the pub by a group of people and that he remembers coming round in the early hours of the morning down the road from where he started. Mr W didn't mention this at the time he reported the disputed transactions to first direct, and there were also inconsistencies in what he told first direct.

On balance, I agree with our investigator that in this case there is no obvious point of compromise in this case. In the circumstances, I agree that it wasn't unfair or unreasonable of first direct to hold Mr W liable for the transactions on his account that he disputed. For that reason, I'm not upholding this complaint.

My final decision

My final decision is that I'm not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 December 2023.

Nicolas Atkinson
Ombudsman