

The complaint

Miss D complains that HSBC UK Bank Plc trading as first direct bank did not refund a series of payment she has disputed.

What happened

Miss D returned from a holiday abroad and after reviewing her statements, found a number of transactions that she did not recognise, which all occurred on 1 September 2022. Miss D disputed two of the transactions for £47.85 and £83.74 that were completed by contactless payment and said this occurred when her debit card was taken by the merchant following a chip and pin transaction as they went to get another machine. The second two transactions for £390 and £610 were ones that she recognised, but she was told the amounts were in the local currency and not in sterling. Because of this, the amounts were much higher in value than expected.

First Direct issued a final response letter in which it explained that as chip and were used for some of the transactions, they would not be considered fraudulent. And Miss D did not lose her card at any point, so they did not agree there was a reasonable point of compromise for fraud, and they did not uphold the complaint.

Miss D referred the complaint to our service and our Investigator looked into it. They explained that Miss D's testimony about the contactless payments was backed up by the evidence. This showed the two contactless payments occurring in quick succession following a chip and pin transaction. So, they recommended that First Direct refund these two payments, which they agreed to. However, they did not agree that the last two payments should be refunded as, while she had not intended to pay the amounts she did, Miss D did authorise the transactions, so she was liable for them.

Miss D did not agree with the outcome and she pointed to another decision our service made which she felt was similar to hers, which was upheld.

As an informal agreement could not be reached 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.

First Direct has agreed to refund the contactless payments for £47.85 and £83.74 following the Investigator's recommendation, and I agree that this was the right outcome. Because of this, I see no reason to comment on these further.

Miss D says that while she did authorise the two payments of £610 and £390, she thought she was paying in the local currency and not sterling, so did not expect the values to be as

high as they were. Generally speaking, the starting position in law is that an account provider is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the account. And a customer will then be responsible for the transactions that they have authorised. While I recognise that Miss D did not intend for the values to be as high as they were, the starting position in law is that First Direct was obliged to follow her instruction and process the payments.

In addition, when the amounts are compared to her usual account activity, they did not appear to be out of character or unusual. So, I don't think First Direct should reasonably have stopped the payments for further checks before processing them.

Miss D has highlighted another case that our service upheld which she feels is similar to her own. However, every case has to be considered under its own merits as there are multiple factors that can affect an outcome. In this case, Miss D has been unable to provide evidence of the intended amount of the items, such as a receipt, and she has been unable to contact the merchant directly to try and arrange a refund. And the only evidence available for me to consider is First Direct's systems showing she used chip and pin to authorise the transactions.

Having carefully considered everything, I agree that First Direct should refund the two contactless payments of £47.85 and £83.74. However, I do not agree that they need to refund the £610 and £390.

My final decision

I now direct HSBC UK Bank Plc trading as First Direct bank to refund the two transactions for £47.85 and £83.74. However, I do not uphold the other two transactions for £610 and £390 for the reasons set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 24 November 2023.

Rebecca Norris
Ombudsman