

## **The complaint**

Mr L complains that HSBC UK Bank Plc failed to refund monies he lost from his account after his debit card was stolen.

## **What happened**

### *What Mr L says*

Mr L explained that he first noticed a problem with his account when he went to pay for an item using his phone and the transaction was declined due to insufficient funds. Once he looked into the issue, he realised there were several transactions on his account that he didn't recognise.

Mr L contacted HSBC about the issue and discussed the disputed transactions. It was explained that these transactions took place overseas (country X) at casinos and automated teller machines (ATM). Mr L said that he last knew he had his card when he was dropping off a close family member at a major UK airport who was travelling to country X. Mr L explained that his family member's destination was over 100 miles from where the disputed transactions took place.

There were over £1,300 in disputed transactions that took place over several days. Mr L only noticed there was a problem about five days after the loss of his card. He explained to HSBC that he rarely used his card and made most transactions through his phone.

Mr L told HSBC that he believed an individual in a coffee shop had been able to view the personal identification number (PIN) for his card which he kept recorded on the "notes" app on his phone. He said he left his wallet on the table and thought this was how his card had been stolen.

After reviewing the claim, HSBC declined to refund Mr L and he made a complaint about the issue.

### *What HSBC say*

HSBC received the notification from Mr L about the unrecognised transactions. He advised them about his belief that he had his card stolen and that a third party had been able to see the "notes" app where he kept the PIN for his card.

After reviewing the claim, HSBC declined to accept it because they didn't think there was a plausible explanation for how the card and PIN were obtained. They again looked into the situation after Mr L complained but didn't change their position.

### *The investigation so far*

Mr L brought his complaint to the Financial Ombudsman Service for an independent review where it was looked into by one of our investigators. Both parties were asked to provide information about the complaint.

Mr L said that he'd been in a coffee shop at the airport whilst he dropped off his close family relative. He said that he'd been using his laptop to deal with some work matters and had a document open on the screen that contained the PIN for his card. He said this document was open for some time and that's how the third party had been able to obtain the PIN. He also believed the third party stole the card from his wallet whilst it was on the table in the coffee shop.

Mr L didn't notice the disputed transactions for about five days because he didn't generally use his card to make payments – choosing instead to use his phone. Mr L said he'd returned to the coffee shop (on the advice of HSBC) and obtained an image from their camera system of an individual who Mr L said was sat behind him at the time he was in the coffee shop. The image was of a man with a hood up and a mask covering the lower part of his face whilst walking on a pavement.

HSBC provided data about the use of the card, how transactions had been made from the account and online banking activity. They also supplied copies of calls held with Mr L and their assessment of the activity.

After reviewing the evidence, the investigator said:

- There was a gap of a few days between the loss of the card and the first disputed transaction. A thief would tend to use it as soon as possible after the theft.
- There was an inconsistency between what Mr L told HSBC and our service about how his PIN was compromised. He told HSBC it was stored on his phone and our service that it was on a document left open on his laptop.
- Mr L used his online banking on several occasions during the time his card was lost and would have seen his balance. It was thought he should have noticed this sooner and contacted HSBC about it.

The investigator thought overall that it was unlikely to be anyone else who authorised these transactions. Mr L's complaint wasn't upheld.

Mr L disagreed with the investigator's outcome and said:

- He didn't think the delay in spending the funds was relevant.
- He was using both phone and laptop in the coffee shop and thought the bank had failed to accurately report what he'd told them. Also that the "notes" on his phone automatically update on his laptop.
- He wasn't looking at his mobile banking during this time.
- Mr L thought his complaint had been handled with bias.

As no agreement could be reached, the complaint has now been passed to me for a decision.

As part of my investigation, I asked both HSBC and Mr L for further details about the complaint. I sought to clarify the circumstances at the coffee shop, but unfortunately Mr L didn't have anything further to add about what happened as he believed he'd already provided that information.

HSBC were asked to provide further details concerning the disputed payments and how the

debit card was used at the time of the loss reported by Mr L.

This information showed that Mr L used his debit card whilst he was in the coffee shop together with his PIN and that just prior to this he carried out a balance enquiry at an ATM in the airport.

The first disputed transactions took place about four and a half hours after the card was last used in the coffee shop (not several days recorded in the investigators report). They continued to be made over several days but stopped before Mr L noticed them. There were two failed PIN attempts over the time the card was missing. There were no further recorded uses of the card after it was reported stolen.

### **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.

Mr L believes there's been bias when investigating his complaint. I'd like to assure Mr L that investigations are carried out solely to establish the facts concerning the complaint and nothing more. My decision is made as an independent person with no pre-determined outcome and is based on an impartial assessment of the evidence. When there's a disagreement about what happened, I'll make my decision based on the balance of probabilities.

The relevant law surrounding authorisations are the Payment Service Regulations 2017. The basic position is that HSBC can hold Mr L liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

HSBC can only refuse to refund unauthorised payments if it can prove Mr L authorised the transactions, but HSBC cannot say that the use of the card and PIN conclusively proves that the payments were authorised.

Unless HSBC can show that consent has been given, it has no authority to make the payment or to debit Mr L's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transactions. It shows that the transactions were authenticated using the payment tools issued to Mr L. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr L responsible for the disputed transactions or not.

Mr L believes his card was stolen and his PIN obtained after spending time in a coffee shop at a major UK airport. Mr L said he obtained a CCTV image after asking the coffee shop for access to their system and sent in a picture of a male on a pavement in a hood and face covering.

Mr L said he mainly used his phone to make payments from his account, but on the day of the loss of his card, he made an enquiry at an ATM and shortly after used it in the coffee shop using both the card and the PIN. The card was first used for a disputed transaction about four and a half hours after it was used in the coffee shop. These payments took place overseas.

In order to recommend Mr L received a refund, I would have to be satisfied that he lost his card and there was a realistic explanation for how his PIN was obtained. In this case it's apparent that those transactions weren't carried out by Mr L himself because there are payments made from his phone in the UK at the same time his card was being used

overseas. But, if I find that the card was more than likely used with Mr L's permission, he would still be liable for the money taken from his account.

There are some untypical features to the events surrounding the complaint, including the pattern of usage of the card. Usually, a thief who obtained the PIN (and had stolen the card) would use it as soon as possible as they wouldn't be aware when it would be reported. That wasn't the case here, although I accept there would be some travel time to get from London to the overseas location. But there would also have been ample opportunity to use the card at the airport as there are many ATM's/shops available.

The card itself was only used for a few days, by which time the account had been emptied and was using its overdraft. I haven't seen any evidence that it continued to be used after it was reported stolen, which can indicate the user of the card was aware it had been reported.

Mr L said he wasn't aware of what was happening with his card because he never checked his account. There's evidence that shows Mr L used his online (mobile) banking on several occasions throughout the period his card was missing. That included setting up a new payee (which requires several steps to be carried out on the app) the day before he first reported the loss. I'm surprised Mr L didn't notice issues with his account balance during one of these mobile banking sessions and notify the bank earlier.

Regarding his version of events that he gave to HSBC and to our service. It's apparent that there are different versions. Mr L was quite clear when he spoke to HSBC that he was using his phone and a particular app. That changed when he explained what had happened in his complaint to our service, he then said it was a document open on his laptop that he was working on. In response to the investigator's outcome, Mr L then said he was using both phone and laptop and it was HSBC's (and our) fault for not accurately interpreting what he said.

I don't think Mr L has been consistent here, his versions have changed at different stages of the complaint. I understand that people's recollections can change when they remember different aspects of the earlier event, but Mr L's insistence that his comments were interpreted poorly just doesn't reflect what he told both HSBC and our service.

Mr L said he obtained a CCTV image of the person who was sat behind him which shows him walking away on a pavement. The coffee shop in question is a well-known chain and is inside the airport which is a security-controlled zone. It seems unlikely to me that the coffee shop would have access to pavement CCTV as that would generally be controlled by the airport authorities. Much more likely they would have CCTV inside the coffee shop, but unfortunately Mr L was unable to provide any pictures of the alleged thief inside the shop.

It's also unlikely the authorities would provide a CCTV clip to a private individual. I'm not aware if Mr L had involved the police who would have been able to obtain such images.

I have considered the likelihood that Mr L was "shoulder surfed" when he used the ATM to check the balance on his account, but his insistence that the hooded thief was responsible when he was using his phone/laptop just doesn't seem likely. I have some remaining questions about the source of the photo but Mr L's response to my additional enquiries has meant I've relied on the information I do have.

Overall here I think Mr L's testimony has been inconsistent. Taken together with the untypical use of his card and PIN, lack of a plausible story about how his PIN was compromised and the delay in reporting the loss to HSBC, I think, on balance, that Mr L was more likely than not responsible for the use of his card by other persons. I think it was both fair and reasonable for HSBC to hold him liable for these transactions and I won't be

upholding 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 Mr L to accept or reject my decision before 28 August 2023.

David Perry  
**Ombudsman**