

The complaint

Miss L has complained that HSBC UK Bank Plc won't refund transactions she says she didn't make or otherwise authorise.

What happened

In April 2023, Miss L's card and PIN were used for a cash machine withdrawal and two point of sale payments, totalling about £6,000.

Miss L says she lost her card on a night out and the subsequent spending wasn't her. She hadn't used her PIN during the night out, it wasn't recorded anywhere, she hadn't told it to anyone, it wasn't shared with anything else, no one had been with her when she'd last entered it, and she didn't know how anyone else could've known it.

HSBC held Miss L liable for the payments in dispute, as they'd been made with her genuine card and PIN and there wasn't a likely way someone could've learned the PIN without her permission. They also noted that Miss L checked her online banking a number of times while the disputed payments were happening, but didn't report things until after the fact.

Our investigator looked into things independently and didn't uphold the complaint. Miss L asked for an ombudsman to look at things afresh, so the complaint's been passed to me to decide.

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.

Broadly speaking, HSBC can hold Miss L liable for the payments in dispute if the evidence suggests that she authorised them.

I'm satisfied from HSBC's technical evidence that the payments in dispute used Miss L's genuine card, and the correct PIN. It was not a cloned card. So I can see that these transactions were properly authenticated. The question, then, is whether the evidence suggests that it's most likely Miss L consented to the transactions, or not.

First, I've considered the possibility that the payments were made by someone who Miss L didn't know – such as a third-party thief or fraudster.

As noted above, the payments were made using Miss L's correct PIN from the very first try. So whoever made these payments knew the PIN. But Miss L has been clear that she didn't record, give out, or share her PIN, nor let anyone see her enter it. And she hadn't used her PIN during the night out or for many hours before, so there was no reasonable opportunity for a thief or fraudster to watch her enter it and learn it that way. So there's no likely or plausible way that an unknown party could've learned Miss L's PIN without her consent.

Further, I might've expected a thief to try to take as much money as possible, as quickly as possible, before the card is reported lost. But here, the person using the card checked the balance and made the smallest payment, then waited over 7 hours to use the card again for the bulk of the disputed spending. They left a very substantial balance remaining in the account. And in that first transaction, they didn't even withdraw the maximum amount of cash they could. It is most unlikely that a thief would act this way. This is much more consistent with the behaviour of someone who knew the account would not be imminently blocked – such as the accountholder or someone acting with her permission.

I don't see a likely or plausible way that an unknown party did this.

Next, I've considered the possibility that the payments were made without Miss L's consent by someone who she knew, such as a friend or family member. But that's not likely or plausible either. Miss L was out with people who she'd only met a couple of times, and she didn't make any PIN payments on the occasions she was with them. And again, the PIN wasn't otherwise written down, shared, or told to anyone. So there was no opportunity for any of the known parties present to learn Miss L's PIN without her consent.

Finally, I've considered the possibility that the disputed payments were made by Miss L or someone she'd given her permission to.

This possibility is both likely and plausible. It explains how someone was able to use Miss L's genuine card and the correct PIN. It also fits with the pattern of the payments, such as the large gap between disputed payments and the fact that the person using the card didn't spend nearly as much as they could have as quickly as they could have.

Further, I can see that Miss L checked her online banking repeatedly in the hours between disputed payments. I can see this was her as she logged in using her Face ID. So she would've seen that her card was being used. But she didn't tell HSBC that things were wrong until after the fact. It seems unlikely that Miss L would wait so long to report the disputed payments if they were being made without her consent.

And I've not seen any evidence that makes it seem implausible or unlikely that Miss L could've authorised these payments or given someone else permission to make them.

Miss L pointed out that there was an hour's difference between the times of the payments HSBC had given her on the phone, and the times in the card report. That's just because some systems report things in GMT, and some in BST, which at that time had an hour's difference. It's not significant. I'm satisfied that these payments were properly authenticated using Miss L's real physical card and the correct PIN.

I do appreciate that Miss L would like to see CCTV footage. Such footage is only kept for about a month. But even if it were still available, it would've only shown what the person making the transactions looked like. It would not have shown whether they had Miss L's permission or not. And as I explained above, based on the evidence it is not likely that the payments were made without Miss L's consent. So even if the CCTV showed someone other than Miss L, I'd still find it's most likely that they were acting with Miss L's permission.

In summary, I'm satisfied that Miss L's genuine card and PIN were used. Based on the evidence, there isn't a likely or plausible way an unknown person did this, or that someone known to Miss L did this without her permission. That leaves only one likely possibility – that Miss L made the transactions or gave someone else permission to make them. This is a difficult message for me to give, and I know it's a difficult message for Miss L to receive. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

So based on everything I've seen, I think it's fair for HSBC to decline a refund in this case.

My final decision

For the reasons I've explained, I don't uphold Miss L's complaint.

This final decision marks the end of our service's involvement in the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 15 August 2023.

Adam Charles
Ombudsman