

The complaint

A Limited, represented by director Ms S, complained because HSBC UK Bank plc refused to refund the company for transactions which Ms S said hadn't been authorised.

What happened

On 19 January 2023, Ms S rang HSBC about transactions on A Ltd's business bank account which she said she didn't make. Eight debit card payments had been made to an online remittance business which I'll call B. The first was on 10 January and the last on 20 January, and the total was £768.63. There were other, genuine, transactions between those to business B.

When Ms S rang HSBC, she said she still had her debit card, and no-one else had access to it. She said she hadn't written down or recorded the PIN.

HSBC investigated, including contacting business B. It rang Ms S back on 14 February, and confirmed in writing that it didn't agree to a refund. HSBC explained that business B had confirmed Ms S's personal details, and these were the same as Ms S's genuine details. HSBC said it had considered all the information from Ms S and business B, and couldn't refund her. It said that if she wanted to continue to dispute the transactions, she'd have to contact business B herself.

Ms S didn't accept this and wrote back to HSBC on 14 March. She said she'd contacted business B to ask what details it had for the account to which the money had gone. But it had said it would only provide information either to the bank or police. Ms S also said that business B had asked her if she'd received email confirmation for the payments from her bank account, but she hadn't. Ms S asked HSBC for more information about the business B account, and other details about the transactions. Ms S said she ran a small business and wasn't happy just to let go of this, as £768.63 had been unlawfully taken from her account and left her without support in distress and anxiety.

Ms S chased for a response on 11 May. HSBC paid A Ltd £50 compensation for the delay. But in its final response letter on 16 May, it said that business B had confirmed personal details which matched those of Ms S. It said it had reconsidered but in view of the information from Ms S and from business B, it didn't support the claim for a refund. So if A Ltd wanted to pursue this further, Ms S would have to raise it direct with business B herself.

Ms S, for A Ltd, wasn't satisfied and contacted this service. She set out what had happened and said the business wasn't doing too well, and it was difficult to accommodate the loss. She said she'd had nothing to do with the transactions and she wanted HSBC's information about the investigation, so she could know who opened the account with business B in her name.

Our investigator didn't uphold A Ltd's complaint. She said that the evidence suggested that the transactions were either completed by Ms S, or someone acting on her behalf. So the investigator believed HSBC's decision was fair.

Ms S, for A Ltd, wasn't satisfied. She said that:

- she'd never opened an account with business B. She said she'd asked business B for details of the account opened in her name, but it had refused. She said she hadn't received a confirmation email for opening an account, nor had she received email confirmation from business B about the payments it had received. Ms S said that if an account had been opened in her name, she had a right to all this information.
- HSBC hadn't sent her any One Time Passcode (OTP) to verify setting up the first transaction on 10 January. She said she was shocked that HSBC said it had sent her one, because she'd asked the HSBC advisor why she hadn't received a OTP and had been told that business B didn't have the facility for them. Ms S said she was sending screenshots of all the OTPs received from HSBC during the relevant period.

Ms S said that HSBC had to be taken to account for this claim, and needed to provide proof of the number to which it sent the OTP and why she didn't receive it. She said if she'd received it, she'd have been able to stop that transaction and the subsequent payments. Ms S said HSBC had failed in its responsibility towards her as a customer by not sending any OTP.

Ms S, for A Ltd, 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.

First, this complaint is against HSBC. Ms S, for A Ltd, is also unhappy about business B – for example its refusal to provide her with information about the account in her name. I can only consider matters relating to A Ltd's complaint about HSBC, not about the recipient organisation business B.

In these circumstances there are regulations which govern disputed transactions. 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. So I've considered whether it's more likely than not that Ms S, for A Ltd, authorised the payments or permitted someone else to do so with her authority.

Ms S told HSBC that she still had her card, to which no-one else had access, and said she hadn't disclosed any of her details. So it's hard to see how a third party fraudster could have obtained her details and carried out the payments.

I've borne in mind that the payments aren't typical of fraudulent payments. They're generally for small amounts, and took place over ten days. Fraudsters typically take out as much money as they can, immediately, to maximise their gain before the fraud can be discovered and payments blocked. That's not what happened here. And at the time of the first £20 payment on 10 January, there was over £4,200 in A Ltd's account. It's unlikely a third party fraudster would only have taken £20.

There were also genuine transactions between the payments to business B. It's surprising that Ms S, who made these genuine payments to other recipients, didn't raise the alarm with HSBC sooner than she did.

I've seen the evidence of the query which HSBC raised with business B, and business B's response. The information is confidential, but I accept that the account which business B held, had information which matched what HSBC held about Ms S.

I note Ms S's comments in relation to the OTP, which she says she didn't receive. I consider it's more likely than not that HSBC did send a OTP. But in any case, that isn't the most important factor here. I can't see how Ms S's details could have been compromised and her information held by business B.

Taking all these factors into account, I consider it's more likely than not that it was Ms S, or someone known to her who had access to the debit card and security information, who carried out the disputed transactions. Either would count as Ms S authorising the transaction for A Ltd. So HSBC does not have to refund A Ltd, and 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 A Ltd to accept or reject my decision before 11 October 2023.

Belinda Knight
Ombudsman