

complaint

Miss Y complains that following a number of transactions, which she says she did not make or otherwise authorise, HSBC Bank plc closed her account and recorded adverse information about her as it believes she may have knowingly allowed fraud to happen on the account.

Miss Y is represented by her father in referring her complaint to the ombudsman service.

background

Miss Y opened her account in January 2012. She made a single withdrawal of £10 in April 2012 and intended to start using it again in August 2012. She then discovered that she could not find the card and she informed the bank. The bank said it would not issue a new card as the account had been closed. It refused to provide the reason why it had taken this action.

Miss Y then attempted to open accounts with other banks but her applications were refused and it was discovered that HSBC had recorded adverse information about Miss Y in respect of transactions on the account that turned out to be fraudulent.

Our adjudicator considered whether or not, even if Miss Y had not made the transactions, she provided her authorisation or was in some other way complicit in allowing them to be carried out. The bank had demonstrated that the genuine card was used for the transactions and the personal identification number ("PIN") was entered correctly.

The adjudicator, initially, did not consider there was a compelling explanation, based on what Miss Y had said, as to how an unknown fraudster could have been able to access Miss Y's card and become aware of her PIN without her knowledge or consent. And he was not persuaded that the fraudulent transactions were carried out by a family member, who could be said to have had more convenient access to both card and PIN.

Subsequently, Miss Y altered what she recalled about the PIN - and how she retained and secured it - and this provided an explanation about how the PIN might have become known to an unknown third party. But the adjudicator, while recognising that her recollections may have been prompted to alter, felt that he could place less weight on the new recollections than he would have if they were offered originally.

He also noted that there was concern about how the transactions were possible given that there were inadequate funds in the account to cover them but he explained how it was.

And, as regards to CCTV footage that Mr Y wanted to view, the adjudicator said that while it was possible that the person who physically made the purchases was recorded, even if it was demonstrated that it was not Miss Y using the card, the footage would not show whether the person in question had her approval for the purchases. And it would still not explain how the card came into the possession of the other person or how they knew what the PIN was.

Taking everything into account, the adjudicator concluded that Miss Y may have allowed a third party to use the account, although not necessarily being complicit in the fraud. He said she may have innocently allowed someone she trusted to use it. However, given all the circumstances, this would still not mean that he could say the bank had acted inappropriately in holding Miss Y liable for the transactions.

Mr Y has asked for this complaint to be reviewed by an ombudsman.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Mr Y has reiterated that Miss Y sometimes kept her PIN in her purse, when it was not retained in her drawer, and she noticed it was missing from both places when she noticed the card was missing. He says that her anxiety affected her ability to remember accurately what happened to the PIN and it would have been out of character for her to have been involved with any fraudulent activity.

Where evidence is incomplete, inconclusive, or contradictory, I have to reach a decision on the balance of probabilities; that is, what I consider is most likely to have happened, given the evidence that is available and the wider surrounding circumstances.

Based on the evidence that was initially provided to the adjudicator, I agree that Miss Y presents no compelling argument as to how a third party fraudster was able to access the card and PIN in order to make the transactions. I note however that Miss Y now explains how the card and PIN could have become available to the fraudster together. And I note what Mr Y says about how her recollections were affected. But, initially, Miss Y wrote to us, and therefore I consider that to be after some reflection:

"...I had only kept the PIN code strip that I received from the letter. This used to be at home in my drawer..." and "...I was only able to remember when I used to save my PIN in the notes app on my phone..."

Whereas, after the adjudicator said he was not minded to uphold the complaint Mr and Miss Y wrote:

"...it has come to mind that [Miss Y] has now stated that although she kept the PIN in her drawer, she now says she remembers keeping the PIN strip sometimes in her drawer first then used to carried it with her with the card in her purse to remember the PIN. Confusingly, [Miss Y] has probably forgotten to mention that her PIN was carried in her purse..."

As I have said, I cannot know for certain what happened; I have to decide what is more likely than not to have happened. And, while I recognise that Miss Y has suffered anxiety about the situation with this account, it does not seem that the specific explanation that Miss Y provided originally about how the PIN was retained – and how she prompted herself to remember it - was inaccurate to the extent that it was subsequently suggested when a different explanation was provided to the adjudicator.

Having taken account of all the evidence available to me, I agree with the findings and conclusions of the adjudicator. There exists no explanation that I am sufficiently persuaded of, as to how a third party fraudster has been able to access the card and PIN. On balance, it seems to me more likely than not that Miss Y either made the transactions or otherwise authorised them by allowing someone to use the account. And on that basis, I do not consider that I can fairly and reasonably require the bank not to hold Miss Y liable for the transactions.

my final decision

My final decision is that I do not uphold this complaint.

Ray Neighbour
ombudsman