

The complaint

Mr O complains that HSBC UK Bank Plc (HSBC) allowed him to use his overdraft to gamble, which he feels should not be permitted.

What happened

Our investigator's background summary covered all the relevant facts and issues, and is known to both Mr O and HSBC, so I won't repeat it in any great detail. So, if I've not mentioned something it's not because I've ignored it, rather, I don't think it's relevant to the issues I need to deal with. However in summary it is this;

Mr O has a bank account with HSBC with an agreed overdraft of £3,000. In 2016 his overdraft reached its limit, which he says was due to his gambling. In the subsequent years Mr O says he reduced the overdraft debt but then in 2019 he gambled again and the overdraft increased once more. Mr O feels that HSBC should have prevented him from using his overdraft to deposit cash into online gambling platforms, and as they didn't, he ought to be compensated.

Barclays looked into his complaint but rejected it, as they considered they had not made any error in authorising Mr O's transactions.

Mr O was unhappy with HSBC's final response and so brought his complaint to this service and our investigator looked into it. Having done so, the investigator didn't think HSBC had acted unfairly towards Mr O and didn't require HSBC to do anything further. Mr O didn't agree with that and asked that the complaint be passed to an Ombudsman 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. The role of the Financial Ombudsman Service is to mediate individual disputes between consumers and businesses, and to award redress where it is appropriate.

Our service doesn't have the power to make rules for financial businesses, direct that they change their processes, or punish them. That is for the regulator, the Financial Conduct Authority (FCA). We can't give businesses direction on policy or procedure. We can only say whether it is a policy or procedure which is being applied fairly and reasonably to all their customers. The FCA takes a principles-based approach to conduct regulation and lets businesses choose how they incorporate those principles into the way they deal with customers. This is reflected in the remit the FCA has given this service under the Dispute Rules in the FCA Handbook. What we recommend however can influence how businesses review their policies.

The first important point to make is that an overdraft facility provides a customer with access to borrowed funds, but that said, the customer is entitled to spend those funds on whatever they like. If they wish to gamble then they are free to do so and the bank cannot immediately

stop them because there is nothing legally wrong in gambling. The banks can do something with debit cards, by imposing restrictions on the card – but that is not the case here.

But if a bank knows their customer is in financial difficulties they are obliged to treat that customer positively, sympathetically and fairly, so the question arises as to what HSBC knew about Mr O's circumstances. In this case there is no evidence that Mr O went to the bank and asked them for their help in restricting his use of his overdraft. So without that knowledge HSBC would have limited information about whether Mr O was experiencing financial difficulty. I accept that Mr O's transaction history shows deposits to gambling sites, but this wouldn't of itself have demonstrated financial difficulty to HSBC. People do gamble without running into such difficulty.

In Mr O's case, the picture from 2016 shows that Mr O did run up to the limit of his overdraft but then he paid it off. As our investigator has said, many people operate their finances by use of a continued overdraft facility and there is nothing wrong in that. And that is what Mr O was doing, albeit he was choosing to use it in part to fund his gambling. So the fact that he was in overdraft and that he managed to pay it off would demonstrate that he wasn't actually in financial difficulty because he was managing that debt. I can see from Mr O's statements that it was not until the 14 November 2019 that he began to make multiple deposits to the online platforms. By my calculation, these deposits were just under £2,200, and received into his account was £1,350. But despite that deteriorating position through November Mr O did not ask for any help from HSBC, until he made his complaint on the 9 December. So I can't say that it would have been reasonable to expect HSBC to have intervened and stopped the transactions as there didn't appear to be any gambling difficulties.

I appreciate Mr O feels HSBC have acted irresponsibly in allowing him to use his overdraft for gambling, but for the reasons I have explained, I must disagree. So, although Mr O will probably be disappointed with my decision, I can't say HSBC has acted unfairly or unreasonably here and I'm not upholding his complaint.

Mr O has raised two issues which I can't deal with. The first is with regard to an overdraft reduction warning message he was given online. I can't look at that complaint because he never raised that with HSBC, and so they haven't been able to respond to the complaint. The second relates to HSBC not reviewing his overdraft limit every 12 months. Again, as he's not made that complaint to HSBC, I can't look at it for the same reasons.

My final decision

For the reasons set out above I do not uphold the complaint against HSBC UK Bank Plc.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 1 June 2020.

**Jonathan Willis
Ombudsman**