

## **complaint**

Mr N deposited a very large sum with HSBC Bank Plc and complains he did not have the easy access to the funds he was promised and that an overdraft was provided even though he instructed the bank he didn't want one.

## **background**

After making a large deposit into an HSBC Premier instant access savings account in early 2013, Mr N complained he was not able to get access to his money when he needed it. This resulted in him losing the opportunity to buy a property for his personal use. He also complained the bank allowed him to go overdrawn on his current account in July 2013 even though he told them not to give him an overdraft facility. In its final response, the bank said Mr N always had access to his money and had contacted HSBC regularly to obtain funds when they were needed. It accepted it allowed him to go overdrawn without an agreed limit by over £18,000 but said it was willing to do this as he was a Premier customer and the transfer was not unusual. It said it was not willing to reimburse him the amount he went overdrawn as the bank made no error and Mr N withdrew the money for his own use.

The complaint was referred to this service and, having looked at Mr N's bank statements, our adjudicator was of the opinion that HSBC did not refuse him access to his funds as regular transfers were made to him, including of substantial amounts. With respect to the complaint that on several occasions £300,000 had not been made available to him to buy property, she said that if this had been requested after June 2013 the bank would have been within its rights to refuse as there were insufficient funds on the account at that time.

Regarding the complaint about the overdraft, our adjudicator said that as the account went overdrawn as a result of Mr N's spending, it would not be fair and reasonable to expect the bank to refund the amounts that were debited. She understood that Mr N was expecting a payment of £30,000 into his current account and wanted to have the full amount available. However, she did not think the bank acted incorrectly by using this credit to pay off the overdrawn amount. As the bank did not take any overdraft charges, she said she could not say he suffered a financial loss.

Mr N said, in brief, that he had no need of an overdraft as he had sufficient funds on his other accounts but that because the bank allowed his current account to go overdrawn, the £30,000 he needed on that account was not available to him. Our adjudicator still did not think the complaint should be upheld or that Mr N should be reimbursed the £18,000 as she said he went overdrawn as a result of his own spending.

In response to a request from this service for any final information to be considered, Mr N told us that because of a medical condition he is virtually housebound. He said his attempt to purchase property to equip for disabled use fell through because of the bank's errors. He said it was their fault his account went overdrawn as he instructed them not to allow him an overdraft and in any event, he had sufficient funds on his other accounts to cover his spending. He said he did voluntarily take a £2,000 overdraft in 2014 with the intention of buying a mobility scooter. He has every intention of paying this back although currently says he cannot afford to do so.

The complaint has now been passed to me to reach a final decision.

## **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 N told our adjudicator that he started gambling to get money to buy himself a house after the bank refused to let him transfer £300,000 out of his savings account. However, like the adjudicator I am not persuaded that the bank refused Mr N access to his money. I have seen no evidence for this and I can see from his bank statements that in March 2013 the bank allowed him to transfer £350,000 out of his account in one amount. He says the bank told him they would not allow him an overdraft to buy a house. However, as our adjudicator has said, if Mr N was looking to buy the house after June 2013 he would not have had enough money on any of his accounts to cover the cost and so the bank would have been within its right to refuse to do that.

With regard to the part of the complaint about the overdraft he was given, I am aware that Mr N spent around £23,000 online with a bookmaker in July 2013 over a period of two days using his debit card. From looking at his statements, I can see this was not unusual for him during the weeks before or afterwards. At that point, he had just over £4,000 on his current account and so went overdrawn by over £18,000. After the weekend, a credit of £30,000 was then received into his account from the bookmaker which the bank offset against the amount overdrawn. No overdraft charges were taken. However, Mr N said he was under the impression that the full £30,000 would be in the account for his use and that the money was intended for a deposit on a house.

When Mr N later contacted the bank to complain, he said he told them after he opened the accounts that he had a gambling addiction and was not informed his account could go overdrawn. He said he had money on his other accounts when he went overdrawn and having looked at his statements I can see this was the case. As Mr N did have sufficient funds on his other accounts, if he needed the full £30,000 for a house deposit, the bank would presumably have allowed him to go overdrawn again to cover the deposit even if there had been some problem in transferring his money in. I have seen no evidence that Mr N did try to obtain £30,000 from his accounts at that time or that he was prevented from doing so. However, as I have already said, if Mr N was hoping he could then withdraw another £270,000 to cover the cost of a house, the bank would have been within its rights to refuse that as he did not have sufficient funds on any of his accounts.

Mr N says he instructed the bank not to allow him an overdraft. However, having looked at the account opening documentation I can see that Mr N ticked the box that asked whether he would like to apply for an overdraft. He also signed an authorisation form agreeing that the bank could debit his accounts with any amounts he instructed the bank by telephone to pay whether the accounts were in debit or credit. In the absence of any evidence that Mr N instructed the bank not to provide him an overdraft, I cannot say that the bank did anything wrong by allowing him one. I cannot in this case find that the bank lent irresponsibly because the payments he made that put his account overdrawn were made on a debit card that Mr N had the funds to cover.

Mr N's objection to the bank letting him go overdrawn may be related to his distress about the amount of money he was gambling. However, I don't consider that by allowing him to go overdrawn for a few days, when he still had money in his savings account, that the bank can be held responsible for that. Mr N was unfortunately gambling large amounts of money before he went overdrawn as well as large amounts afterwards, and regularly transferred

money out of his savings account for that purpose. The bank's staff have said that, whilst not wanting to cause offence, they discussed with Mr N on more than one occasion how he was spending his money. They said Mr N recognised he had a problem with gambling and told them he was going to stop.

I am very sad to hear about Mr N's gambling problems. Gambling is a common and legal leisure activity but I am aware that for a minority of people it becomes a serious disorder which can often cause damage to their physical and mental health. I expect the bank to deal sympathetically with the financial difficulty that Mr N now finds himself, and responsibly in relation to any future credit, and hope Mr N gets treatment via his doctor for his gambling addiction.

### **my final decision**

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

Under the rules of the Financial Ombudsman Service, I am required to ask Mr N to accept or reject my decision before 20 April 2015.

Sarah Carter  
**ombudsman**