

## **complaint**

Mr G complains that HSBC Bank Plc should have realised that he had a problem with gambling in the form of compulsive share trading, and should have taken more decisive steps to restrict his account. He also complains that HSBC unreasonably used his salary payment to offset his debt, leaving him without access to funds and in a highly distressed state.

## **background**

Mr G held a sole-named current account with HSBC with an overdraft facility of £12,000. He also held an Invest Direct share dealing account with HSBC, which had a borrowing facility of £10,000, and operated a joint current account with Mrs G.

Mr G explains that share trading became a gambling addiction for him, causing him to trade daily and irresponsibly and resulting in his losing the share assets that he had started out with. Mr G also says that this meant he operated his current account and Invest Direct account badly, incurring substantial account fees and interest on the overdrawn balances.

From February 2010, HSBC was in communication with Mr G about his making trades without having sufficient cleared funds in his Invest Direct account to cover them. In October 2010 HSBC wrote to Mr G to draw his attention to the position on his account and to say that it may consider withdrawing the trading limit on the Invest Direct account if he did not take steps to address the debt. The letter also said that the trading limit would be removed if the same problem happened again in future, and the shares sold to repay the debt.

Mr G continued to use his account as before. In September 2012 HSBC forced the sale of the shares and stopped the limit on the Invest Direct account. Mr G considers that HSBC should have taken that step far sooner than it did, in order to curb his trading activities, and says that the date chosen by HSBC disadvantaged him in terms of the market value of his shares at that time.

In addition, Mr G says that HSBC wrongly used his salary payment without warning to reduce his overdrawn balance, leaving him with no funds and causing him substantial distress.

HSBC did not consider that it should reasonably have realised that the share dealing on Mr G's Invest Direct account was made because of a gambling addiction. Although it had placed a block on Mr G's account at one stage, that was later lifted when the overdraft debt was repaid. It did not accept that Mr G made it aware that he had a gambling problem and so did not consider that it was under any duty to end the trading facility sooner than it did.

An adjudicator investigated the complaint. After considering the evidence she concluded that HSBC had exercised its commercial judgement legitimately when deciding whether or not to allow Mr G's facility to continue. She was not persuaded that HSBC had been made aware, at the time, that the trades were a symptom of Mr G's gambling compulsion. The adjudicator also considered that the online application that Mr G had made in 2012 had been assessed in the ordinary way, using the information contained in the application form and Mr G's credit score at the time. She did not accept that HSBC had been irresponsible in agreeing the application.

However, the adjudicator did not consider that HSBC had acted fairly in leaving Mr G without any funds at all when it used his salary against his debt. She recommended that HSBC should pay Mr G £300 in respect of the distress and inconvenience caused by that.

HSBC accepted the adjudicator's findings. Mr G did not agree with the adjudicator and said, in summary:

- HSBC has used the fact that its letter said it "*may remove*" the facility as a way of avoiding its responsibility. It also wrote that it "*would remove*" the facility the next time the same problem happened, which was in about November 2010. Nobody has provided a proper explanation about why the facility was not withdrawn then.
- The Invest Direct account was not blocked every time funds were not available. In fact, the account was rarely blocked – again, nobody has provided a precise list of when the account was blocked. More frequent use of account blocking would have restricted his losses and also prevented account fees.
- HSBC should not have taken account of the good standing of his joint account when making commercial decisions on his Invest Direct account. They are separate accounts, and he made sure the joint account was properly maintained in order to hide his problem from his wife.
- When he was not allowed any access to his salary, he intended to take his life at the HSBC branch and was very nearly detained under the Mental Health Act. His wife had to take a half-day away from work in order to come to his aid, and lost pay of £130. After covering this, the compensation recommended by the adjudicator amounts to only £170 which is wholly inadequate and will not deter HSBC from doing the same thing to someone else.
- His accounts with HSBC remain open; they have not been closed. HSBC has mismanaged his accounts by sending warning letters that it did not act upon – he told it he had a share dealing problem but it took no action.
- He often exceeded his overdraft limit on his current account and on his share dealing account. He was given a computer-generated decision on the loan application, and HSBC is hiding behind commercial judgement as a reason for not letting him have a remortgage loan now.

### **my findings**

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

In the ordinary way of things, a bank does not have any duty to its customer to restrict or monitor the use they make of the overdraft or other borrowing facilities provided on their account. But Mr G says that he had a gambling addiction which HSBC should have realised was the reason for his frequency of trading, and for the way he was using the facilities on his trading and current accounts. Essentially, Mr G considers that – in the circumstances – HSBC had a duty to him to stop his behaviour by withdrawing his borrowing facilities.

After very careful consideration of the evidence, I am not persuaded that HSBC should have realised that Mr G had a gambling addiction. In particular, I do not consider that Mr G

explained his addiction to HSBC during the period in question or that he asked it for help in curbing his borrowing. Mr G objected strongly when HSBC blocked his trading account in September 2011, saying that HSBC had prevented him from completing a profitable sale. In my view HSBC could not reasonably have been expected to infer, simply from Mr G's account usage, that he was suffering from a gambling addiction.

I appreciate Mr G feels very strongly that, if HSBC had taken a harder line with him or had acted swiftly to put in force the restrictions it had threatened, he would have been prevented from trading and could have avoided various losses. The difficulty, though, is that I do not accept that HSBC should have realised what was happening – or that Mr G wanted the facilities to be removed from him. So I cannot fairly hold it responsible for the fact that Mr G's share trading was not stopped sooner.

The borrowing that Mr G applied for was processed through HSBC's normal assessments and, given Mr G's overall financial position, succeeded. I can see no reason why HSBC should not have taken account of the good running of the joint account which Mr G held with Mrs G, when assessing the loan application.

The various accounts remain open, albeit without active credit facilities, since they cannot be closed while the debts remain. Overall, I am not persuaded that I should uphold Mr G's complaint in relation to the granting of borrowing facilities, or HSBC's failure to restrict them sooner.

However, like the adjudicator, I do not consider that HSBC acted reasonably in refusing Mr G access to any of his salary when it used its right of set off to take the salary in reduction of Mr G's debt.

Because of his state of mind at the time, Mr G was extremely distressed when he visited the branch and it seems to me that HSBC could and should have dealt more sensitively with Mr G on that occasion. However, because of the underlying problems that Mr G faced at that point it appears likely to me that he would inevitably have experienced considerable distress, even if HSBC had properly allowed him access to a limited amount of his salary. My award is intended only to address the additional distress caused to Mr G. I do not supervise or regulate the banks, and so my awards cannot be set at a level designed to act as a deterrent or punishment.

### **my final decision**

My final decision is that I uphold this complaint in part. I direct HSBC Bank Plc to pay Mr G £300.

Jane Hingston  
**ombudsman**