

The complaint

Mr J complains, via his solicitor, that HSBC UK Bank Plc didn't stop transactions from his bank account to gambling operators despite signs of potential gambling addiction and financial difficulty. I have mostly referred to Mr J in this decision.

What happened

Mr J opened an HSBC account in September 2015. He said HSBC approved many payments to gambling operators within a very short period. He said between September and October 2015, £4,070 was paid into his account and £4,005 paid out, with no payments to gambling operators. But from October to November 2015, £12,218 was paid in and £14,134 paid out, with £9,459 to a gambling operator. In the next few months Mr J said he paid out more than was received into his account with further transactions to gambling operators.

Mr J said from February to March 2016 £25,217 went into his account with £21,501 paid out, and £14,000 to gambling operators in 12 transactions. From March and April 2016, £56,922 went in with £61,802 out, including £31,350 to a gambling operator in 18 transactions. He said his deposits increased by 923% from the average amount over the period September 2015 to January 2016, and withdrawals increased by 854% by the same comparison.

Mr J described further periods up to April 2017 where generally more was paid out of his account than was received, with a large increase in deposits and withdrawals, and multiple gambling transactions. He said during this time HSBC didn't query any of his transactions or the reasons for their significant increase. From his gambling between September 2015 to April 2017, he said he lost £36,943, which has caused him significant financial harm.

Mr J said the Payment Services Regulations, the Financial Conduct Authority's Handbook and the BSI code place a duty on banks to exercise reasonable skill and care, pay regard to the interest of customers and follow good industry practice to keep accounts safe. This includes looking out for payments which might indicate a risk of financial harm from financial abuse from suspicious transactions. He said this should have included his transactions leading to intervention. Mr J said HSBC was in breach of its duty of care.

Mr J said HSBC should have made enquiries from 12 October 2015 due to the number of gambling transactions and this would have revealed he was vulnerable and potentially suffering from gambling related harm and financial difficulties. And HSBC would have been able to take or suggest steps that would have benefitted him and mitigated his losses. Instead HSBC facilitated his losses and gambling harm. Mr J complained to HSBC in January 2017 that he hadn't made the gambling transactions on his account. HSBC said the transactions were properly authorised by Mr J, and closed his account.

Mr J's solicitor complained to HSBC in June 2022 that he was, and is vulnerable and HSBC should have carried out its duties to prevent harm, but made serious mistakes. He said this had caused severe disruption to his daily life and personal relationships. And requested a refund of his losses of £36,943 with interest at 8% and payment of £3,500 compensation for his distress and inconvenience.

HSBC responded that it takes the safety and security of customers' accounts very seriously and its fraud detection works on a combination of trends and spending patterns. HSBC said a debit card transaction is a guaranteed mode of payment which it's unable to stop once

authorised with valid card details. It said the gambling transactions were authorised by Mr J and were within his spending pattern. HSBC said this cannot be classified as financial abuse as Mr J made the transactions without force against his consent. HSBC said it's not liable to pay his loss as he made the transactions and was aware of his finances.

Mr J wasn't satisfied with HSBC's response and his solicitor referred his complaint to our service. Our investigator didn't recommend that the complaint be upheld. He referred to the Financial Conduct Authority's guidance about protecting customers, but said there's no agreed definition for problem gambling, though it's obvious that harm can be caused.

The investigator said banks were subject to different obligations at the time, but even now they aren't expected to monitor customers' accounts for gambling transactions. He said HSBC has systems in place to detect unusual activity and has confirmed that none of the activity on Mr J's account at the time triggered concerns that he wasn't undertaking the transactions himself. The investigator said HSBC reviewed Mr J's account and determined it was well managed. He said we wouldn't ask it to provide a refund as it hadn't made an error and had acted reasonably and in line with the relevant financial practices.

Mr J's solicitor disagreed with the investigator and requested an ombudsman review the complaint. He repeated some of the transactional information from Mr J's account and said his frequent losses and dramatically increased deposits demonstrated habits of a person vulnerable to gambling addiction.

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.

I was sorry to learn about Mr J's gambling problem. He says HSBC failed to intervene when it saw signs of potential gambling addiction and financial difficulty and as a consequence should be responsible for his financial losses. HSBC says it didn't see these signs and acted correctly to Mr J's payment instructions.

HSBC said Mr J's complaint was made in 2017 and so is time-barred as the events occurred over six years ago. HSBC said it investigated the transactions when Mr J first complained and asked why it has taken him over five years to raise further concerns. However, Mr J's previous complaint was that the transactions were fraudulent, whereas the present complaint acknowledges the transactions were his, but concerns HSBC's non-intervention to assist with a gambling problem. For that reason I have considered Mr J's complaint.

Mr J said his multiple gambling transactions were drastically different to his usual banking pattern. I can see these started in September 2015 when he opened the account, and so I think they were part of his normal banking pattern with HSBC. They continued to April 2017 near to when his account was closed. HSBC said in answer to Mr J's previous complaint that it will stop transactions where there is a suspicion of fraud but won't be liable for customers' spending patterns and cannot stop customers making authorised debit card payments.

In saying HSBC should have intervened to prevent financial abuse, Mr J's solicitor appears to be allying suspicious transactions with harmful transactions. The rules and requirements around the former are in place to protect customer accounts and banks from the actions of fraudsters, whereas the latter concern transactions that may be harmful to the wellbeing of an account holder for other reasons, including gambling. I haven't found any evidence of financial abuse as there is no suggestion that anyone forced Mr J to make the transactions, and this was closely reviewed by HSBC previously.

HSBC said it won't be liable for the customer's spending decisions and could not stop Mr J from making the transactions. HSBC is required to process authorised debit card transactions without let or hindrance, so long as it doesn't suspect fraud.

Mr J's solicitor mentions the Financial Conduct Authority and others' principles for the exercise of reasonable skill and care, and paying regard to the interest of customers. At the time there was no duty of care on banks to monitor customer accounts and most banks still don't manually monitor accounts or have a mechanism to look for gambling activity, though a general Consumer Duty is now in place.

I've thought about whether Mr J's regular and substantial payments to gambling operators should have prompted HSBC to realise there might be a problem. A bank is only likely to become aware of a potential problem if it has been alerted by the account holder or third party or flagged up for some other reason. That's likely to be because there are signs of financial difficulty that causes it to look further – this could be regular use of an unplanned overdraft, returned direct debits, being over a credit limit or missing expected payments.

HSBC has to support customers that are in financial difficulty, but I haven't found anything to suggest that Mr J raised financial difficulty to HSBC. I have seen the regular gambling transactions from Mr J's account and that his account was funded in part from other accounts and a savings account. I can see that Mr J had an overdraft facility of £3,500 which was used as intended, with transfers into the account to bring it back into credit. I haven't found instances of the overdraft being mismanaged or ignored. And I haven't seen other common signs of gambling addiction such as those mentioned above.

I don't think the balance of funds in Mr J's account gave an indication of financial distress and the account appears to have been reasonably well managed. And from looking at Mr J's spending and conduct of his account, I think that although the credit turnover appears to have been excessive I don't think HSBC was required to intervene as Mr J suggests. And so, I think it was reasonable for HSBC to consider Mr J's gambling and other transactions to be within his normal spending, and not to monitor those transactions as a matter of course.

Mr J's solicitor said HSBC's lack of intervention facilitated Mr J's losses and gambling harm. One of our considerations is the personal responsibility of the consumer for their transactions and I think this suggestion would negate responsibility on the part of Mr J. I haven't seen anything to suggest that he self-excluded from gambling operators or requested HSBC for blocks to be applied to payments to gambling operators.

I can understand Mr J's concerns about his gambling and the impact on his finances but I haven't found that HSBC acted outside of the requirements on banks at the time or treated him unfairly and so it would be unfair for me to require HSBC to take any action.

My final decision

For the reasons I have given it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 12 February 2024.

Andrew Fraser

Ombudsman