

The complaint

Mr S complains that State Bank of India (UK) Limited ('SBI') provided poor service and failed to provide him a refund after he fell victim to a fraud.

What happened

In 2018, Mr S was befriended by a person he believed to be living abroad at the time. Unfortunately, it later transpired that the person was a fraudster intent on stealing Mr S's money.

The fraudster informed Mr S that their father had died as a result of military action in the country they were living. Following his death, they claimed they were unable to obtain a large sum of funds left in his account.

The fraudster continued to engineer stories and convince Mr S—by using fake legal representatives and banking staff—that his help was needed to access these funds. And in order to do so, he was told he'd have to pay a number of fees prior to their release.

Mr S was instructed by the fraudster to make three separate payments to three third-party accounts. So, on 15 July 2019, he attended a branch of SBI to carry out the transfers.

Shortly after this, he discovered he'd been defrauded and attended the bank in an attempt to recover his funds.

SBI contacted the three third-party banks in an attempt to recall the payments; but these were rejected. SBI informed Mr S that there was nothing further it could do. It also decided to close Mr S's account.

Mr S, unhappy with SBI's actions, made a complaint. He wanted SBI to recall the money lost and compensate him for the way it'd treated him. SBI didn't agree it'd done anything wrong, so Mr S referred his complaint to our service.

An Investigator looked into Mr S's complaint, but thought SBI hadn't done enough to protect Mr S. They concluded that SBI had failed to question the legitimacy of the transactions and processed the payments despite being aware that Mr S was vulnerable to fraud. As such, they recommended that SBI repay the funds lost and recommended it pay interest and compensation.

SBI disagreed with the Investigator's assessment. It pointed out that at no point had Mr S informed it he was vulnerable or suffering ill health. It also argued that prior to the transactions, Mr S had been warned about potentially being defrauded; but still went ahead with the payments regardless. It added that it carried out due diligence on the payments and asked Mr S questions around the legitimacy. But as Mr S was generally rude and obstructive regarding questioning, it was unable to establish much about the purpose of the transfers. It said Mr S confirmed he'd carried out his own research [on the investment] and confirmed some of the payments were going to a beneficiary known to him personally.

As SBI has disagreed with the Investigator's finding and recommendations, the matter has been passed to me to make 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.

Fraudulent transactions

It's common ground that Mr S authorised the fraudulent payments equating to £60,000. He was duped by the fraudsters into instructing his branch to transfer the sums to the three accounts held by third-party businesses. He was deceived into believing that the payments being made were for fees to release a greater sum being held; commonly referred to as advanced fee frauds.

I accept that this was an 'authorised payment' even though Mr S was the victim of a sophisticated fraud. He presented himself at the branch, identified himself and signed the relevant paperwork to authorise the transactions. So, although he didn't intend for the money to go to the fraudsters, under the Payment Services Regulations 2017, and the terms and conditions of his account, Mr S is presumed liable for the loss in the first instance.

But that is not the end of the story:

- Regulated firms like SBI are also required to conduct their 'business with due skill, care and diligence' (FCA Principle for Businesses 2) and to 'pay due regard to the interests of its customers' (Principle 6).
- Firms also have a longstanding regulatory duty *'to take reasonable care to establish and maintain effective systems and controls for compliance with applicable requirements and standards under the regulatory system and for countering the risk that the firm might be used to further financial crime'* (SYSC 3.2.6R, which has applied since 2001). And over the years, the FSA and its successor, the FCA, have published a series of papers setting out non-exhaustive examples of good and poor practice found when reviewing measures taken by banks to counter financial crime.
- Firms are required to comply with legal and regulatory anti-money laundering and countering the financing of terrorism requirements. In July 2017 those requirements included maintaining proportionate and risk-sensitive policies and procedures to identify, assess and manage money laundering risk – for example through customer due diligence measures and the ongoing monitoring of the business relationship (including through the scrutiny of transactions undertaken throughout the course of the relationship).

In addition, as a matter of good industry practice in July 2017, I consider firms should in any event have taken proactive steps to:

- Identify and assist vulnerable consumers and consumers in vulnerable circumstances, including those at risk of financial exploitation (something also recognised by the FCA in recent years and by the British Bankers Association's February 2016 report 'improving outcomes for customers in vulnerable circumstances');
- Look to identify and help prevent transactions—particularly unusual or out of character transactions—that could involve fraud or be the result of a scam.

In relation to branch transactions – follow the Banking Protocol when available. It's common ground that there were fraud triggers in this case because SBI staff did in fact intervene prior to processing the payment. SBI has pointed out that it doesn't have a specific script it uses to question high value or suspicious payments, but it has said its staff would have questioned the legitimacy of the payments prior to processing them.

The only evidence I have to consider in the circumstances of this complaint are a few notes that have been hand written onto the authorisation forms completed in branch. These appear to have been countersigned. In summary, one of the three forms confirm that Mr S knows the beneficiary and highlights the payment's purpose as "school fees". Another confirms Mr S is aware of the beneficiary and confirms the account details. SBI has added further submission that there was more rigorous questioning, such as asking Mr S if he'd carried out sufficient due diligence on the payment that had been highlighted for the purpose of an "investment". But SBI hasn't been able to support this with evidence or written record, and I would question why it recorded and countersigned some questions, but not others. It has however stated that Mr S regularly attended the branch and was rude and obstructive to questioning. Having said this, testimony from SBI employees in branch where the transactions were carried out has been mixed.

One employee has highlighted that Mr S was irritated that so many questions were being asked and said that they were his funds and that the staff member should proceed with the payment as requested. They further added that Mr S said that the bank no right to stop his payments. The same employee has highlighted that Mr S's responses to the questions asked weren't convincing.

Another employee has provided testimony that Mr S was very calm and not aggressive. They add that Mr S gave all security related answers and at no point were they shouting, nor arguing, with members of staff.

I appreciate that due to the passage of time recollection can somewhat be distorted. But even if the first member of staff's testimony was accurate, it isn't uncommon for victims of fraud to be obstructive to questioning. In a lot of cases involving a victim of fraud, there is sometimes an element of fear or embarrassment when being questioned. And as with most cases, the victim can't cohesively answer questions as their stories tend to be untrue or given to them by the fraudsters. This, in essence, is the reason why questioning can be effective in identifying a victim of fraud or, at the very least, provide enough suspicion to take further action.

Here, it seems the level of questioning was basic. The members of staff involved in processing the transactions asked Mr S what the payments were for and if he was aware of the beneficiaries the funds were being transferred to. And despite the member of staff acknowledging that the responses to questioning weren't convincing, it doesn't appear this suspicion was acted upon or further questions asked about the legitimacy of the transactions. I think further probing questions about the specifics of the transactions likely would have uncovered the fact that Mr S wasn't making the transactions for what he'd specified on his payment instruction forms. And this likely would have heightened suspicions rather than quelled them as Mr S wouldn't have been able to coherently answer them; as can be demonstrated by the member of staff's suspicion from basic questioning.

In addition to this, there is further pertinent information surrounding this complaint that I've considered as well as the level of questioning carried out above.

Shortly prior to the transactions (subject to this complaint) being carried out, Mr S attempted to open another account with SBI. When attempting to open this account, Mr S informed SBI that he was expecting a payment to the account he intended to open for the

value of millions of United States Dollars (USD). This payment was the amount promised by the fraudsters after Mr S had paid the relevant fees to release sum.

SBI carried out due diligence on this account opening application and discovered Mr S was likely being defrauded. This is openly acknowledged in internal communications between members of staff at the bank. Branch staff were informed specifically that Mr S had likely been a victim to an advanced fee fraud and pointed out a number of irregularities in the paperwork he'd submitted in support of this. Branch staff were instructed to speak with Mr S and inform him about these types of frauds and that he'd likely fallen victim to one.

SBI has said that this discussion did take place in branch, but again, has no record of this. However, I think it's important to highlight that SBI staff—including those in branch—were aware that Mr S had been a victim of fraud and was vulnerable to such crime.

SBI has been requested to show evidence of any warnings or notes placed against Mr S's account to alert members of staff to this vulnerability. But it doesn't appear from the evidence provided that this was done. Having said that, members of staff in both branches where the application was made, and where the transactions were carried out, were aware of this issue. I say this as Mr S attempted to carry out the same application in both branches and was rejected on the same basis; that they suspected he was victim to a fraud.

Considering the points above, I don't find that the level of questioning or due care and diligence was sufficient when carrying out the payment instructions. Mr S was known to be vulnerable to an advance fee fraud. He has then shortly after this attended branch and instructed SBI to make three payments equating to £60,000 to three new payees for separate reasons. I think this presented a concerning situation to the bank and I don't find it reasonable that it merely confirmed the payment destination, asked if the recipient was known to the consumer and if he'd carried out sufficient due diligence on the investment he was alleged to have been making payment for. I don't think this was effective in identifying the fraud or making Mr S aware of the potential consequences of proceeding with the payment. So, I must now consider what I think would have happened if SBI had carried out sufficient checks and asked effective questions in the circumstances.

Our service has been provided with the documentation from Mr S highlighting the instruction to make the three transfers to the fraudsters. This was provided to him in the form of emails from a person purporting to be from a third-party bank. The emails—to a person adept in financial crime and fraud—are in my view clearly fraudulent. And, to my knowledge, this was the only evidence Mr S had to support the payments he was making.

I don't think Mr S would have effectively been able to answer further questions about the payments being made. This lack of reasonable answers or potential evasiveness to questions, along with the knowledge of Mr S recently being victim to an advance fee fraud, I find would have been a sufficient to have reasonable suspicion of the transactions. And I find that this would have either prevented them from being made or for SBI to invoke the Banking Protocol and contact Police. As it's more likely that either of these actions would have prevented the funds being transferred to the fraudsters, I find SBI should be held liable for their loss.

Should Mr S bear some responsibility for the loss

SBI has made several submissions around Mr S's knowledge of the fraud and his personal circumstances. It's alluded to Mr S's career as being one that provides professional knowledge of financial matters. It's also highlighted that despite Mr S being

made aware by the bank that he'd likely fallen victim to a fraud, he continued with the payments.

Unfortunately, none of the conversations warning Mr S that he was victim to a fraud were recorded. In the letter to him rejecting his application for an account, there was no mention of him likely being defrauded and I can't see that he was signposted anywhere for help; such as the Police. Nor can I see that notes were placed against Mr S's profile to alert other members of staff of his vulnerabilities and the conversations had with him. Furthermore, Mr S himself has indicated that he remembers no such conversations being had with him.

It is difficult for me to say for certain what truly occurred. But I would find it highly unusual for a financial business not to relay such important information to one of its customers for their own protection. Having said that, it's also highly unusual that a bank would fail to record such conversations with a customer and record their vulnerability on their profile to alert members of staff and prevent further harm.

However, while I understand SBI's concerns in that Mr S failed to heed warnings regarding the fraud he was victim to, there are other circumstances to this complaint that I've taken into consideration when deciding if Mr S should bear some responsibility.

Mr S has informed our service that he was diagnosed and is being treated for a large number of medical conditions that effect his physical and mental health; including dementia. Having reviewed his medical notes it's clear that Mr S was particularly vulnerable at the time he was being defrauded.

I acknowledge that SBI were unaware of these conditions and staff members have broadly described Mr S as able in mind and body in the way he presents himself. But it can't be ignored that these serious medical conditions left Mr S vulnerable to such crimes and his judgement and responsibility were likely severely impacted by his medical conditions. Even if he'd been warned regarding the fraud and even if the documents presented to SBI were of sufficient quality to doubt their authenticity, I find Mr S's condition likely impacted his ability to see through this and use better judgement. He'd been targeted by experienced and manipulative fraudsters that were likely preying on his vulnerabilities and engineering him to believe their story.

It is for these reasons that I find Mr S shouldn't bear any responsibility for the funds lost.

Account closure

Businesses, much like consumers, have the right to close a customer's account if they no longer wish to continue a relationship with them. Our service can't tell a business to continue offering banking services to a customer unless certain circumstances apply. This would include where a business has a legal obligation to provide the customer with a basic bank account under the Payment Accounts Regulations. That doesn't apply here, so I've gone on to consider if the way in which SBI closed Mr S's account was fair and reasonable in the circumstances.

SBI has highlighted that Mr S had breached the terms and conditions of his account. It says that Mr S had attended branch and was abusive and rude to its staff. Mr S has said that he can't remember the specifics of the allegations made against him. As I've already touched upon, Mr S has highlighted that he is currently undergoing medical treatment for dementia and suffers with a number of other medical conditions that affect his memory and cause him to become frustrated; and I think this is understandable in the circumstances. But SBI were unaware of Mr S's condition, or that he was particularly vulnerable due to these at the time.

SBI closed Mr S's account providing 60 days' notice. This allowed Mr S a considerable period of time to find alternative banking arrangements. And this is in line with what our service would consider a reasonable period of time. As such, I don't find that SBI's actions were unfair in the circumstances. I therefore won't be asking it to do any further in relation to the account's closure.

Putting things right

SBI should repay Mr S the funds he lost as a result of the fraud. And as Mr S has been deprived of the funds he lost – it's reasonable that SBI should pay Mr S simple annual interest on the amount from the day it could have prevented the loss to the date it settles with Mr S.

I must also consider if any compensation should be paid to Mr S for impact SBI's error caused.

I agree with the figure recommended by the Investigator of £250. While it must be acknowledged that the vast majority of the impact caused by this loss originates from the fraudsters that perpetrated this crime, I do think that the banks inaction and delay in settling Mr S's complaint has added to this.

As I've highlighted already, Mr S was having to cope with a number of medical conditions that no doubt had an impact on how he lived his day to day life. And I find it likely that this delay and lack of protection has exacerbated some of these conditions.

My final decision

For the reasons I've given above, I uphold this complaint and direct State Bank of India (UK) Limited to:

- Refund Mr S the £60,000 lost as a result of the fraud
- Pay Mr S 8% simple annual interest from the date of the transactions to the date it settles
- Compensate Mr S £250 for the impact caused

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 December 2021.

Stephen Westlake
Ombudsman