

The complaint

Mr H is unhappy Halifax Share Dealing Limited (“HSDL”) failed to safeguard him from a gambling addiction after it lifted the restrictions from his ISA account.

What happened

Mr H had a share dealing ISA with HSDL. He contacted HSDL in June 2020 and told it he had been using the account to enable his gambling addiction. He asked HSDL to *“seal the account up so [he] can’t deal online.”* HSDL reminded Mr H about shares he had sold that hadn’t settled, and asked him if he wanted *“the account blocked from any further transactions?”*

Mr H told HSDL he needed *“to withdraw that cash as soon as it cleared”* and that he also held stock in a company that was suspended from trading, that he was unable to do anything with. HSDL said it couldn’t close the account while the suspended stock was still there. It suggested it could *“start with a block on the account”*, allowing Mr H to lift the restriction if he provided a password. It said Mr H should call back to close the account after the funds from the sale of his shares had cleared.

Mr H contacted HSDL two days later providing the password and instructing it to remove the restriction – and a week after, he began trading again.

In July 2020 Mr H raised a complaint. He told HSDL he’d raised his gambling addiction with several of its staff, but it hadn’t done enough to protect him. He also mentioned the lifting of the restrictions had caused him to make financial losses. HSDL didn’t agree. It explained the service it offered was execution only – it wasn’t required to assess the suitability or appropriateness of the service for Mr H. It had explained there were risks associated with using the service and applying restrictions was the extent of the options it had available. It arranged to close the account and waived the £12.50 ISA administration fee as a good will gesture.

My provisional decision

I issued a provisional decision on 11 February 2022. I said:

“Mr H tells us he made HSDL aware of his vulnerability. He says “Halifax for reasons of their own choosing let me continue despite knowing my circumstances. At the time of the complaint I had come out of bankruptcy, but I was taking out payday loans to fuel the addiction. This as well as my wages went to Halifax.”

But HSDL says it’s done nothing wrong. It says it was unable to act beyond temporarily restricting Mr H’s account. And because the service it was offering was execution only and it had provided risk warnings to Mr H, it hadn’t acted in error.

From what Mr H has told us, I’m satisfied he had an addiction and was trying to manage it. He’d reached agreements with bookmakers as well as a number of share dealing platforms to prevent him from trading or betting. So, I have to consider what

action HSDL took when it received Mr H's message and whether that was fair and reasonable in the circumstances.

I've borne in mind the guidance from the Financial Conduct Authority's ("FCA") 2019 consultation paper:

<https://www.fca.org.uk/publication/guidance-consultation/gc19-03.pdf>

and the most recent guidance from its 2021 consultation paper:

<https://www.fca.org.uk/publication/finalised-guidance/fg21-1.pdf>

Both sets of guidance define a vulnerable consumer as "someone who, due to their personal circumstances, is especially susceptible to detriment, particularly when a firm is not acting with appropriate levels of care."

The guidance sets out why firms need to act differently to avoid harm to these consumers. Especially where it concerns consumers who can't make decisions in their own interests. Specifically that:

"Characteristics of vulnerability may result in consumers having additional or different needs and may limit their ability or willingness to make decisions and choices or to represent their own interests. These consumers may be at greater risk of harm, particularly if things go wrong."

In particular, the most recent guidance further explains why Mr H's vulnerability puts him at risk of harm. It says, "Failure to recognise when consumers are struggling to make decisions or act in their own interests and provide the right support, can result in harm. For example, cognitive disabilities, mental health conditions or addiction can lead to harmful financial decisions, vulnerability to scams and buying unsuitable products."

And

"Fluctuating mental health conditions or addictions can lead to harmful or reckless financial behaviour. These consumers can be more at risk from buying inappropriate products, fraud or financial abuse."

I can see Mr H flagged his addiction to HSDL. He says this was done on a number of occasions, but HSDL disagrees. It's shared a copy of a webchat conversation, which it says was the only time Mr H raised his addiction.

At the start of this particular exchange, Mr H says that he'd "raised this several times with colleagues and you are the [first] to take it seriously. Had others acted then I may not be in this position." However, considering all of the communication between Mr H and HSDL, I can't see that he had mentioned his addiction before. Because of this, I'm not persuaded HSDL were aware of Mr H's issues before June 2020 and so, I don't think it could have been expected to have taken any action earlier than this date.

But HSDL was aware Mr H was using the platform to gamble following the webchat. And it's clear, it shared some concern about his revelation - HSDL discussed the idea of applying a temporary restriction that could be removed by password, and then closing the account after the sale of his shares completed. The problem I find is that despite the knowledge HSDL had that Mr H's vulnerability meant he could struggle to

act in his own interest, it gave him the ability to remove the restrictions on the account without any input from HSDL. In effect, although Mr H specifically asked HSDL to stop him trading, even when he wanted to, the steps HSDL took didn't allow him to achieve that.

HSDL has countered that its execution only status limits its actions to what consumers tell it to do, but I don't think that's enough to justify their actions here. Mr H made a clear plea for HSDL to stop him from trading. Unfortunately, HSDL didn't take that on board. So, I find HSDL's actions fell outside the appropriate level of care it was required to provide.

I note that the events complained of took place prior to the FCA's finalised guidance. And that this is in any event guidance, not a set of rules. But HSDL always had an obligation to act in line with the existing principles. As was specifically noted in the 2021 guidance: which say:

"Our guidance makes clear what the standards set by our Principles mean for firms, so that firms understand what we expect of them. It sets out what firms should do to meet those standards. While firms are not bound to adopt or follow any of the specific actions described in this Guidance, they must meet the standards set by our Principles and treat customers fairly."

I've also taken into account the obligation on HSDL set by the Conduct of Business Sourcebook ("COBS") which all authorised firms are required to comply with. COBS 2.1.1R says "A firm must act honestly, fairly and professionally in accordance with the best interests of its client..."

Bearing in mind the high-level principles, the information HSDL already had should have prompted it to think about the impact any further gambling could have on Mr H's financial situation, so, I feel HSDL didn't act in accordance with Mr H's best interests. I also don't think HSDL has dealt with Mr H fairly or appropriately since being told of his gambling addiction - it has stuck rigidly to what it thinks it can do despite being aware of the serious nature of Mr H's vulnerability. Ultimately, he explained he wouldn't always have rational view on that but relied on HSDL to help protect him.

In this particular case, there were many different options open to HSDL. But ultimately it ought to have been really satisfied it was in Mr H's interests to unblock the account before doing so. Instead, it only asked for a password and then granted him access to the account. It's worth adding that to begin with HSDL were going to close Mr H's account, which would have meant he would've been unable to trade. But it's only because of the unsettled shares that this didn't happen. HSDL should really have treated the account as "closed" in all but name, for example, by setting a marker to say it wouldn't accept new opening trades.

Even if HSDL had to leave the account open, Mr H had specifically asked them to "seal the account up so I can't trade online". I think giving a confessed gambling addict a password he could just provide to trade again doesn't fulfil this request or take full account of his interests.

Here, those interests were putting barriers in place to prevent him harming himself by gambling further. So, I'm not persuaded that HSDL's response was reasonable or that it protected Mr H – a vulnerable consumer – from harm.

I then set how what I thought HSDL needed to do to put things right. In summary, I said:

- I was satisfied HSDL should have taken further steps before allowing Mr H to continue to trade and thought it was likely those steps could have established that he was at risk of financial harm. So, I said HSDL's failure to act had an impact on Mr H, not least because he has been facing the very real possibility that his addiction could have serious consequences.
- I thought HSDL could and should have done more to support Mr H and so an award for the distress and inconvenience suffered was appropriate. I said it was clear Mr H was struggling to act in his own interest and tried to reach out to HSDL for support but the steps HSDL took allowed him to continue trading even when he didn't want to. This lack of support despite being aware of Mr H's addiction undoubtedly had a big impact on his mental health and wellbeing.
- Considering HSDL's part in what Mr H had been through, I thought it would be fair for them to pay him £500. But at the time I thought he'd made a profit from trading after the suspension had been lifted, and it seemed the profit was for around £500 too. So I didn't think HSDL needed to make the £500 payment. Lastly I asked HSDL to refund any fees or commission it generated from Mr H's account on trades placed from 24 June 2020 onwards as I didn't think it was fair for it to profit from its error of allowing Mr H to continue to trade.

But following further review of the case once Mr H and HSDL had responded to my provisional findings I checked the trade data and instead found Mr H had made a loss, not a profit, during the period where he ought not have been able to continue trading. That loss was around £850 plus fees, so our service wrote to HSDL to clarify that while the rationale within my provisional decision was not changed, how it ought to put things right had changed given I needed to put Mr H back in the position he would have been in had HSDL prevented him from trading from 24 June 2020 onwards. The proposed redress change included refunding Mr H the £850 he lost, refunding the fees and commission associated with trading after 24 June 2020 (c£290) and paying him the £500 for distress and inconvenience.

Mr H accepted my provisional decision. HSDL said, in summary:

- Overall, it strongly disagreed with the reasoning and approach in my provisional decision. It thought I had fundamentally veered away from the regulatory guidance in place for this type of circumstance.
- It emphasised that the measures I'd suggested it take didn't form part of any available guidance.

It said it had sought and acted on the guidance it received from the regulator, so it said I had misdirected myself and had reached an erroneous conclusion.

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.

In response to my provisional decision, HSDL says the measures I have suggested do not form part of any available guidance. It's stressed the impact this decision could have on the industry, so it's asked that I set out what our service expects firms to do when its customers disclose gambling addictions.

I acknowledge the comments made by HSDL. But I emphasise that my conclusions here are based on what I consider to be fair and reasonable in the particular circumstances of this

complaint. For clarity, I am making no findings on what HSDL ought to do in general when a customer discloses a gambling addiction. My decision is based on the specific interaction HSDL had with Mr H.

As explained in my provisional decision, I've taken into guidance from the regulator – specifically the FCA's consultation papers. These outline guidance for firms to follow to prevent customers with vulnerabilities from risk of harm. Whilst the latter paper came into existence after Mr H notified HSDL, the principles are the same and apply here. I've also taken account of the regulator's principles, as set out in PRIN 2.1.1R. The most relevant principle here is PRIN 2.1.1 R (6) which says: A firm must pay due regard to the interests of its customers and treat them fairly.

I've thought about HSDL having regard for Mr H's interests. I think the rules and guidance underpin that firms are to consider a customer's individual circumstance and tailor its approach accordingly so, that any action it does take is practical and fair treatment of customers in vulnerable circumstances.

HSDL has said there were limits to what it could do. It submits it took guidance from the regulator and that it was advised that firms should take reasonable steps to establish conditions in which consumers could make good choices and that the use of friction, prompts or nudges to encourage consumers to think carefully and consider risks would be useful. It said it wasn't given specific guidance with what to do in execution-only situations, but that encouragement could be given to clients to consider seeking advice where appropriate, or support where appropriate.

I've thought about the guidance HSDL says it received, however, I don't find the broad steps or extent to which HSDL applied friction was sufficient here. I also don't find that its actions paid due regard to PRIN 2.1.1 R (6). Mr H had been candid about his condition, and that he was reliant on the relationship with HSDL to feed his gambling addiction. He'd given HSDL clear instructions to *"seal the account up so [he] can't deal online."* Despite his request and HSDL's own suggestion to close it after the sale of his shares had completed, it allowed Mr H to have control over the account with the limited and, in the context fairly flimsy restriction of having to give a password.

HSDL didn't refer back to his disclosure, ask if he was sure he wanted to trade in light of what he'd said, or ask if he'd consulted a family member when he rang back in. To be clear I'm not saying these are the specific steps it ought to have taken. But they are examples of frictions that, in light of the particular disclosure and particular request Mr H made of HSDL, would, in my view, have more likely resulted in him fairly and reasonably being restricted from accessing his trading account in the way he'd asked HSDL to do. Simply giving him a password, he could enter or read back when calling in didn't in my view fairly take account of Mr H's particular circumstances or interests and treat him fairly. So, it strikes me as concerning that in spite of HSDL's initial recognition that it ought to close the account in all but name, it didn't. Given the facts of this particular case, I'm not satisfied HSDL acted fairly and reasonably in the way it responded to Mr H and his request.

When Mr H first spoke to HSDL the starting position was to close his account. I don't agree Mr H turned this offer down or failed to follow up on it. He clearly expressed a desire for HSDL to stop him being able to trade. The account only wasn't closed because of suspended stock. But the course of action HSDL chose meant that nothing had changed in terms of Mr H's ability to trade other than the requirement to give a password before doing so.

I've thought carefully about this in light of the guidance that HSDL should have been thinking about the fact Mr H's addiction could mean it *"may limit their ability or willingness to make decisions and choices or to represent their own interests."*

And that *"Failure to recognise when consumers are struggling to make decisions or act in their own interests and provide the right support, can result in harm. For example, cognitive disabilities, mental health conditions or addiction can lead to harmful financial decisions."*

Here, Mr H said he had an addiction and that he used this account to further it, to his detriment. Bearing in mind the above and HSDL's obligation to have regard for Mr H's interests (crucially, at times when he may be unable to act in his own interests) I don't think it was fair and reasonable for HSDL to simply give Mr H a password.

In the particular circumstances of this case, I think had HSDL acted fairly and reasonably Mr H wouldn't have been able to trade further and therefore it would be fair for it to pay him for any financial losses he suffered as a result.

In addition, I am in no doubt that HSDL contributed to Mr H's overall financial distress. I think it's clear from the communication that HSDL did not treat Mr H fairly when he asked for help and that its actions put him in a detrimental position. By not tailoring its approach or engaging with his efforts, HSDL contributed to the stresses Mr H said he was under at the time. In light of this, I think a payment of £500 is fair compensation.

My final decision

My final decision is that I uphold this complaint. I direct Halifax Share Dealing Limited to:

- Pay Mr H any losses he incurred from 24 June 2020, when it ought to have prevented him from trading further
- Pay him £500 compensation
- Refund any fees or commission it charged Mr H from all trades from 24 June 2020 until the account was closed.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 28 April 2022.

Farzana Miah
Ombudsman