complaint

Mr J says Halifax Share Dealing Limited (HSDL) did not protect his share dealing account ("SDA") and his shares from fraud committed by his late partner between 2015 and 2017.

background

I issued a detailed provisional decision (PD) for this complaint on 22 March 2019. A copy is attached below, so I will not repeat its contents. This decision is to be read in the context of the PD and abbreviations used in this decision are as defined in the PD. Both parties were invited to comment on the PD. HSDL accepted it but Mr J did not. He made detailed and focused submissions about the grounds on which he considers the PD to be flawed. In the main, Mr J said:

- Acceptance within the PD that he did not make the relevant transactions, between June 2015 and January 2017, and that they appear to have been fraudulent leads to the inescapable conclusion that he has been a victim of online fraud. [Point 1]
- There is insufficient evidence to support the PD's conclusion that the application and activation process for the online service (within his SDA) adequately minimised the risk of fraud. The PD relies, wrongly, on HSDL's evidence about what *would have* happened in the process, without evidence of what actually did happen. As such, the PD relied on speculation. [Point 2]
- My assertion in the PD, that HSDL was not supposed to know that he was not involved in the application for the online service or that correspondence sent to him and related to the application had been intercepted by his late partner, was insufficient and irrelevant. He does not suggest that HSDL had such knowledge and the point is that HSDL did not do enough to verify that he was involved in the application – such as giving him a telephone call, which it did not do. [Point 3]
- The PD applies the wrong test in determining whether (or not) the absence of signature checks in HSDL's share conversion process met the requirement in CASS 6.2.2R for adequate arrangements to minimise the risk of fraud. The question is not whether (or not) such absence made the process insecure, the question is whether (or not) HSDL's wilful omission of such checks from the process was adequate to minimise the risk of fraud. The PD accepts that signature checks would have added another layer of security so I could not reasonably conclude that the risk of fraud was the same with or without signature checks. [Point 4]
- My conclusion in the PD that the Registrar's satisfaction with the completed and signed CREST forms enabled HSDL to reasonably infer that identity was not doubtful is flawed. There is no evidence to suggest HSDL had reason to expect the Registrar to be familiar with his signature and it is more likely (than not) that the Registrar relied upon HSDL's verification of identity – not the other way around. In support of this point, there is evidence of HSDL performing such a verification role for the benefit of the Registrar. [Point 5]
- The PD's finding on the matter of HSDL's sales process relies mainly on the premise that its process for the activation of the online service included adequate security and identification measures – so the absence of further security checks at each point of share dealing does not appear unreasonable. If, as he asserts, that premise is wrong it follows that the PD's conclusion about the sales process cannot stand – and the same applies to the PD's conclusion about HSDL's process for the remittance of the sales proceeds to NBA2. [Point 6]
- In addition, the PD's conclusion about the sales process is flawed because the wrong test was applied. I should not have asked myself whether HSDL had acted

> reasonably or unreasonably in the process. Instead, I ought to have focused on contractual provisions (and a guarantee from HSDL) which entitled him to be reimbursed for any loss incurred as a result of fraud, so long as he had not been grossly negligent or fraudulent. There is no finding in the PD that he was grossly negligent or fraudulent and the PD "… *rejects HSDL's assertion that* [he] *was in breach of* [his] *obligation to safeguard* [his] *assets …*" Therefore his entitlement to reimbursement for the loss incurred from fraud committed in the SDA ought to have been upheld. The same test ought to have been applied in the PD's treatment of HSDL's process for the remittance of the sales proceeds to NBA2. [Point 7]

my findings

I've reconsidered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I have not been persuaded to depart from the findings and conclusions in the PD. I incorporate those findings and conclusions into this decision. I address Mr J's key points below.

Point 1

I do not consider it an inescapable conclusion that Mr J has been a victim of online fraud and I do not consider that the PD stated or suggested this. For the sake of clarity, I also do not suggest that he is *not* a victim of online fraud. The point, which was expressed in the PD, is that this question could not properly be determined – not with the level of evidence available. In the PD I said – *"The transactions between June 2015 and January 2017 (as summarised above) appear to have been fraudulent, but I do not consider there is sufficient evidence to conclude that Mr J was or was not aware of them specifically at the time. As he says, the matter is subject to a police investigation and I consider that the police are better placed to investigate and determine what happened. For the purpose of his complaint, my approach is based on the balance of evidence suggesting that Mr J did not make the relevant transactions."* [my emphasis]

I consider that the matter of whether (or not) Mr J was or was not aware of the transactions at the time – which arguably relates to whether (or not) he has been a victim of online fraud – remains a question that I cannot properly determine with the level of evidence available. I am not persuaded that he has presented anything in response to the PD to show otherwise.

Point 2

Some uncertainties and some lack of full facts were and remain inherent within the issue about the application for and activation of the online service within the SDA. This, arguably, should be expected given that Mr J's position is that he was not involved in it and given that it is impossible to take evidence from his late partner, who he says applied for the service, activated it and intercepted communication about it.

In this context, there was not as much evidence of what *actually* happened in the application and activation process as would have been ideal. Nevertheless, I am satisfied that there was sufficient evidence about what *probably* happened in the process and it is within the remit of this service to determine issues and complaints on the balance of probabilities. The PD relied on this balance of probabilities, not speculation. Given his assertion that he was not involved in the process, it would not appear that Mr J is in a position to competently dispute HSDL's description or to suggest that something different *actually* happened.

Point 3

I retain the view that HSDL's description of the application and activation process for the online service probably reflects what happened in that event. I also retain the reasons given in the PD as to why I consider that the process adequately catered for security/safeguarding and why, on balance, I do not consider that HSDL should have been suspicious about the application for the online service. This was the context in which the PD said HSDL was not supposed to suspect the application or the interception of correspondence. Primarily, the provisional finding was that the process included adequate safeguarding.

I note Mr J's point that a telephone call to him, at the time, could have stopped the process. This might or might not be a valid point, but my conclusion remains that the process adequately catered for security. Like the matter of signature checks in the conversion process, I am persuaded that a telephone call in the application and activation process would have added another layer of security but that does not mean its absence made the process insecure – or, put another way, its absence does not automatically mean that the process did not have adequate arrangements for security.

Point 4

The PD does not say or suggest that the risk of fraud in the conversion process was the same with or without signature checks. It is reasonably clear within the PD, as quoted by Mr J in his submissions, that whilst I noted such checks could have added another layer of security I also said that their absence did not make the process insecure.

Mr J says my reference to insecurity of the process led me to the wrong question – or was the wrong question – however I consider that the alternative he has proposed is essentially the same point (or question) presented in a slightly different way. His reference to HSDL's *deliberate choice* not to apply signature checks is equal to the PD's reference to such checks being absent and his reference to adequately *minimising risk* in the process is matched by the PD's treatment of CASS 6.2.2R in the matter, including where I said – *"I accept signature checks could have added another layer of security but, overall and on balance, I am not quite persuaded that their absence made the process insecure (in the context of CASS 6.2.2R) or means HSDL did something wrong in the conversion and deposit process."* [my emphasis]

Point 5

It might be helpful to quote the part of the PD which Mr J addresses under this point. I said – *"It cannot be ignored that the overall conversion and deposit process involved the Registrars of the shares and submissions, to them, of the completed and signed CREST transfer forms. The conversions would not have completed unless and until the Registrars agreed to change the legal (not beneficial) ownership of the shares from Mr J's name to HSDL's nominee name – which then aids the deposit of the digital holding, on a nominee basis, in Mr J's SDA. In this context, I consider it adequate for HSDL to have taken a composite view on identification in the process whereby it did not rely as heavily on the signatures (and did not apply signature checks) as it has been said it should have. An inference that HSDL would reasonably have drawn from the Form As' details matching the SDA's and from the Registrars being satisfied with the completed and signed CREST transfer forms in order to complete the conversions, is that identity was not doubtful."*

The PD did not suggest that HSDL had grounds to expect the Registrar to be familiar with Mr J's signature. It reflected the plausibility of HSDL reasonably inferring from the elements of the overall conversion process that identity was not doubtful. I am not persuaded that the idea of HSDL having some reliance on the Registrar's part of the process and the idea of the Registrar having some reliance on HSDL's part of the process are mutually exclusive. Both could have been the case.

I acknowledge Mr J's points about specific evidence of HSDL clarifying identification, to the Registrar, within a CREST form and about evidence showing that HSDL checked the CREST forms against the SDA before they were sent to the Registrars. The latter point does not appear to be in dispute. HSDL does not appear to have denied its role in relation to the CREST forms prior to their submissions to the Registrar. The former point relates to a specific event where HSDL clarified that reference to the initials of Mr J's name in the relevant CREST form matched his full name as registered in the SDA. Essentially, this too appears to relate to the matter of HSDL checking the CREST forms against the SDA.

Point 6

As addressed above, the key points that have been made by Mr J about the online service application and activation process and about the conversion process have not been enough to show that the PD's findings on both processes were flawed. I am satisfied that the PD's findings in these respects are reasonable and supported by the balance of probabilities/evidence. Mr J's argument is that if, as he asserts, those findings are flawed then the same applies to the findings about the sales process and the process for remittance of sales proceeds to NBA2 – because the latter is based on the former. However, overall and on balance, I retain the view that the former (findings) are fair and reasonable.

Point 7

This point features Mr J's argument about the reimbursement (for loss caused by fraud) he says he was contractually entitled to. As he says, qualification for this entitlement required that he was not fraudulent or grossly negligent in the matter. He goes on to say that there is no finding in the PD that he was grossly negligent or fraudulent and that the PD rejects HSDL's assertion that he was in breach of his contractual obligation to safeguard his assets.

As I quoted, under "Point 1" above, I have not determined whether (or not) Mr J was a victim of fraud. Mr J is correct. The PD does not find that he was fraudulent. However, with absolutely no discourtesy intended towards Mr J, it must be said that the PD also does not find that he was *not* fraudulent. In straightforward terms, it is a matter I have not addressed and do not address due to insufficient evidence.

HSDL's submissions to this service have featured a somewhat vehement argument alleging that Mr J breached his contractual obligation to safeguard his SDA. He disputes the allegation. In the main, the PD said – *"There is insufficient evidence to determine HSDL's assertion that Mr J was in breach of his obligation to safeguard his assets, at his end, especially with regards to safeguarding information about his assets and account. Falling short of the alleged breach, I provisionally conclude that Mr J ought reasonably to have been more aware (of either what was going on with the SDA or, at least, of matters in general that could have indicated what was going on with the SDA) than he says he was."*

The PD did *not* reject HSDL's assertion that Mr J breached his obligation to safeguard the SDA. Akin to my consideration of the matter of his awareness or unawareness of the alleged

fraud – which HSDL also questioned – I also considered that the allegation that Mr J did not safeguard the SDA could not be determined due to insufficient evidence. My provisional findings did say that Mr J ought reasonably to have been more aware of matters in or related to the SDA than he says he was. I did not and presently do not find that there was/is enough evidence to extend this finding any further, but that does not constitute a conclusion that rejects HSDL's assertion.

There was and is not a basis on which to consider the contractual entitlement Mr J asserts. I have not made the findings – on fraud and gross negligence – which are primarily required in order to address the entitlement further, because I do not have enough evidence to do so.

my final decision

For the reasons given above and in the provisional decision, I do not uphold Mr J's complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 11 May 2019.

Roy Kuku
ombudsman

Copy of Provisional Decision

complaint

Mr J says Halifax Share Dealing Limited (HSDL) did not protect his share dealing account ("SDA") and his shares from fraud committed by his late partner between 2015 and 2017.

background

Mr J opened the SDA in 2005 and registered a nominated bank account (NBA) for the purposes of funding the SDA and making withdrawals from it. Thereafter he received six monthly statements and valuations for the SDA every April and October. This continued until late 2014 around when the SDA was registered for HSDL's online service. The SDA was based on this online service thereafter and HSDL says registration for this would have taken place (and would have been activated) following an

application process (featuring a personal reference number and identification information) and then an activation process (featuring a password that is sent to the account holder partly by email and partly by post).

Prior to converting the SDA to the online service, Mr J changed the NBA. He did this in 2010 and the new NBA (NBA2) was (and remained, until 2017) a bank account he held jointly with his late partner. The email address used for setting up the online service belonged to his late partner. According to the SDA's records, the following transactions then took place between 2015 and 2017 [all sale proceeds appear to have been withdrawn to NBA2.]:

In June 2015, a holding of Mr J's HSBC shares was converted from share certificates (which were in his possession) into a digital holding within the SDA; the holding was also sold in June and the proceeds were withdrawn in the same month.

In July 2015, another holding of HSBC shares and a holding of Lloyds Banking Group shares were converted in the same fashion; they were sold in the same month and the proceeds were withdrawn in August.

In September 2015, another holding of HSBC shares and a holding of BT Group shares were converted in the same manner; they were sold over September and October and the sale proceeds were withdrawn over the same period.

In December 2015, another holding of BT Group shares were converted in the same manner; they were sold on different dates between December 2015 and March 2016; the sale proceeds were withdrawn over the same period.

In March 2016, another holding of Lloyds shares were converted in the same fashion and was sold, on different dates, in April; the sale proceeds were also withdrawn in April.

In May 2016, another Lloyds holding was converted, it was sold in the same month and the sale proceeds were withdrawn in the same month.

In June 2016, more holdings of shares in HSBC and Lloyds were converted, in addition to a holding of shares in SSE; they were all sold on different dates between June and November 2016 and the sale proceeds from them were withdrawn over the same period.

Between December 2016 and January 2017, two more certificated holdings (one in each month) of HSBC shares were converted to digital holdings in the SDA, each was sold a few days after each conversion and the proceeds were withdrawn a few days after each sale.

Mr J says these transactions were fraudulently made by his late partner who passed away in December 2017 – after which, he says, he learnt she had concealed a chronic gambling problem from him for years previously and had committed a number of fraudulent acts seemingly to fund her gambling. Mr J says he had no involvement in or prior knowledge of the transactions in the SDA between June 2015 and January 2017. He also says that he discovered, after his partner's passing, other fraudulent acts she had committed which he was previously unaware of – including a credit card in his name taken out in 2010 and the surrender of their joint endowment policy achieved by her forgery of his signature. He says all of these matters have been reported to the police and are subject to their investigation.

Mr J submitted his complaint to HSDL on the basis that it had failed to properly safeguard his SDA and his shares, and that its failure facilitated the fraudulent transactions and the financial loss (to him) that has resulted from them. He noted that signature checks ought reasonably to have been applied to the transactions – which would have disclosed the fraud – and the failure or absence of such checks contributed significantly to the fraud. HSDL disagreed and did not uphold the complaint. In the main and to date, its position is that:

- The matter involves three distinct processes – the conversion of the shares, the sale of the shares and the withdrawal of the sale proceeds.
- It was not required to apply signature checks for the share conversion exercise. The process involved no change of beneficial ownership, just a conversion of share certificates in Mr J's name into digital shares within the nominee service of his SDA (which was also in his name). The checks applied for the conversion exercises were to verify that the identity details in the applications and on the share certificates matched the identity details on the SDA. The CREST transfer form used in the process was for the benefit of the Registrars of the shares (and was forwarded to them). The "Form A" form used in the process was for its administration, the form requires a signature but that is not for the purpose of a signature check.
- The core issue in terms of the sale of the shares is the registration of the SDA for the online service in 2014. The registration and activation process at that time was designed to apply a secure context for the activation and continuing use of the online service. This was based on the password – which was given in separate parts also for the purpose of security – and upon Mr J's contractual obligation to keep his details for the SDA secure and confidential. Two password changes took place in 2016 that followed the same process of being sent in separate parts. With such a foundation and in the context of share dealing (buying and selling) being a time sensitive activity, the online service was meant to be fluid in its operation and did not require signature checks for online sale instructions. Online sale instructions were deemed to have been genuinely made by the account holders, as they would have logged on with their secure password (and details) in order to place such instructions.
- At the point of withdrawing money from the SDA the relevant risk is that of transferring money to an account that has not been nominated by the account holder. In Mr J's case, withdrawals were made to the jointly held account that he nominated in 2010. A jointly held bank account could be a nominated account and he elected to nominate such a bank account. Overall, it had no indication that the transactions were the subject of fraud and its structures and arrangements adequately catered for the protection of the SDA and its assets from fraud. In this respect, the question that arises is whether (or not) Mr J upheld his role in protecting and keeping secure his details about the SDA. Evidence suggests that he did not and that his failure in that respect caused the alleged fraud.

The matter was referred to this service and considered by a senior investigator. The parties made submission before and after her view. Overall, her conclusion was that:

- Mr J's complaint should be upheld, he should receive £200 for the trouble and upset caused to him and he should receive redress (with interest) for the financial loss arising from the fraudulent transactions.
- HSDL did not do quite enough to safeguard Mr J's SDA and shares. In particular, it appears more likely (than not) that the fraudulent attempts to convert the shares, sell them and withdraw the proceeds would have been identified and stopped early if HSDL had applied a signature checking process – which it did not. Such a process ought reasonably to have been applied. Evidence supports the conclusion that a sample of the signatures used for the fraudulent transactions were notably different to Mr J's real signature.
- The assertion or suggestion that Mr J is partly or mainly at fault for the fraudulent transactions, based on the notion that he did not keep his SDA details secure from his late partner, is unreasonable. He kept his details secure within his home and that was reasonable to do. He was not aware that his late partner – who shared his home – had somehow accessed the information, intercepted letters from HSDL and misused the information for the fraudulent transactions.

Mr J accepted this outcome but HSDL rejected it and asked for an ombudsman's decision.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

I understand the basis (and logic) on which the investigator concluded her findings. However, in equal measure, I also understand the basis (and logic) on which HSDL continues to dispute responsibility for the fraudulent transactions and continues to dispute the investigator's overall view. On balance, I am not quite satisfied that HSDL's responsibility for the fraudulent transactions has been sufficiently established. My provisional conclusion is that Mr J's complaint should not be upheld.

On a preliminary basis, I provisionally conclude the following:

- Mr J opened the SDA in 2005 and he received mailings of six monthly account statements/valuations up to 2014 when they stopped because of the online service.

- In 2010 he changed, within the SDA, the NBA to NBA2. He was entitled to nominate a jointly held account for this purpose and no inference of fault – for nominating a bank account shared by his late partner – arises from this. In the absence of evidence to the contrary, it cannot reasonably be said that he should have foreseen what he later learnt about his late partner. By the same token and because NBA2 was expressly nominated by Mr J, HSDL was entitled to consider remittances to NBA2 as legitimate remittances and was not required to question them.

- The transactions between June 2015 and January 2017 (as summarised above) appear to have been fraudulent, but I do not consider there is sufficient evidence to conclude that Mr J was or was not *aware* of them specifically at the time. As he says, the matter is subject to a police investigation and I consider that the police are better placed to investigate and determine what happened. For the purpose of his complaint, my approach is based on the balance of evidence suggesting that Mr J did not *make* the relevant transactions. Evidence in this respect is the notable difference between the signatures used for the transactions and Mr J's actual signature. I accept, for this reason, that he has grounds to say he did not *make* the transactions.

- There is insufficient evidence to determine HSDL's assertion that Mr J was in breach of his obligation to safeguard his assets, at his end, especially with regards to safeguarding information about his assets and account. Falling short of the alleged breach, I provisionally conclude that Mr J ought reasonably to have been more aware (of either what was going on with the SDA or, at least, of matters in general that could have indicated what was going on with the SDA) than he says he was.

  He should have noticed the periodic statements had stopped. They appear to have been sent to him consistently for around eight years, then for around two and a half years he received nothing. Their absence in that period should have been noticed.

  The same could be said about the dividend receipts that would have stopped following the sales of his holdings. The sizes of the holdings were not insignificant and the same would arguably have been the case for the dividends from them. Mr J ought to have noticed, before 2017, that he was no longer receiving those dividends. It appears that around 10,000 shares from his different holdings were sold in the 2015 transactions and by the middle of 2016 around 6,000 more were sold. Missing dividends from these numbers of shares were likely to have been noticed.

  The same conclusion arguably extends to activity in NBA2. Mr J jointly held it and I acknowledge the suggestion that it was a secondary account for him – he mainly used is solely held bank account. Nevertheless, it appears arguably inconceivable that he would not have check statements or any information about NBA2 at any time during 2015 or during 2016. The proceeds from the share sales were first remitted to NBA2, before they appear to have been transferred to other accounts (one of which appears to have been another jointly held account). It is arguable that, at least between 2015 and 2016, Mr J would have once (or more) noticed sums that were not particularly insignificant being deposited into NBA2. If he

did not, he ought reasonably to have done so and I am not persuaded that the deposits were sufficiently concealed in the bank statements to have gone unnoticed by him.

The preliminary provisional findings above are relevant but they alone do not determine the complaint. Mr J's relationship with HSDL was defined by the SDA. Inherent within that relationship (and the SDA) were the regulated activities of dealing and/or arranging deals in investments (in terms of the share *dealing* service) and safeguarding and administering investments (in terms of the duty to safeguard and administer shares that are held and dealt in the SDAs). Understandably, Mr J's complaint highlights the safeguarding duties owed by HSDL, but its dealing service (under the *administrating* element) cannot reasonably be ignored. The regulator's guidance at PERG 2.7.9G says both the safeguarding and administering elements are important and that the administering element covers services involved in the selling and settlement of assets (such as share dealing). A balance between both aspects is required and this can be seen in the regulator's approach to defining how the safeguarding responsibility should be carried out – as I treat below.

I am persuaded by HSDL's argument that the case should be addressed under the three distinct processes that were applied – that is, in terms of converting and depositing Mr J's shares, selling his shares and remitting the sale proceeds to NBA2.

Conversion and Deposit of the shares in the SDA

The *safeguarding* element of HSDL's safeguarding and administering role would have been engaged in this respect. The shares were Mr J's investment assets and the idea was that upon their conversion from certificated to digital holdings they would be deposited in the SDA which was under HSDL's duty of care (for safeguarding purposes). The regulator's custody related rules at CASS 6.2 apply in this respect. CASS 6.2.1R says that a firm must make "*adequate arrangements*" to safeguard clients' ownership rights over *safe custody assets* (such as Mr J's shares). CASS 6.2.2R says a firm "… *must introduce adequate organisational arrangements to minimise the risk of the loss or diminution of clients' safe custody assets … as a result of the misuse of the safe custody assets, fraud, poor administration, inadequate record-keeping or negligence*." There is clearly emphasis upon the need for "adequate" safeguarding and the aim to "minimise" (not eliminate) the risk of fraud. I must be careful not to arbitrarily subject HSDL to a higher duty. In summary:

- I have not seen enough evidence that HSDL ought reasonably to have questioned whether it was or was not Mr J who sought to register the SDA for the online service in 2014/2015. As I said above, I do not draw a conclusion on HSDL's assertion that Mr J failed to properly safeguard his assets and information about his assets at his end. However, the point is that I have not seen a basis on which to conclude, on balance, that HSDL should have been suspicious about the online service registration. Its arrangements for the registration appear to have been *adequate*, given that it involved an application process (as described) and given that activation of the online service was based on a password that was sent by email and post. That too was an adequate arrangement. It was not supposed to know that Mr J was not involved in the application, as he asserts, or that application/activation related correspondence sent to him were being intercepted by his late partner, as he asserts.

- I consider that the key safeguarding aspects of the conversion and deposit of Mr J's shares were the setting up of the online service and then the conversion and deposit process that repeatedly took place thereafter – between 2015 and 2017. As I said above, I do not consider there is evidence of HSDL's shortcomings in the former. In terms of the latter, I agree with the investigator's view that the signature requirement in the Form A must have had a purpose beyond the administrative one that HSDL argues. If a signature does not serve the purpose of aiding identification, it arguably does not serve any other meaningful purpose. However, this does not mean that the signature was the only or main means of identification in the process.

- HSDL concedes that it did not (and does not) conduct signature checks as part of the process, so there is no dispute to address in this respect and the question that arises is whether (or not) its position is justifiable. On balance, I provisionally conclude that it is. It

cannot be ignored that the overall conversion and deposit process involved the Registrars of the shares and submissions, to them, of the completed and signed CREST transfer forms. The conversions would not have completed unless and until the Registrars agreed to change the legal (not beneficial) ownership of the shares from Mr J's name to HSDL's nominee name – which then aids the deposit of the digital holding, on a nominee basis, in Mr J's SDA. In this context, I consider it adequate for HSDL to have taken a composite view on identification in the process whereby it did not rely as heavily on the signatures (and did not apply signature checks) as it has been said it should have. An inference that HSDL would reasonably have drawn from the Form As' details matching the SDA's and from the Registrars being satisfied with the completed and signed CREST transfer forms in order to complete the conversions, is that identity was not doubtful. I accept signature checks could have added another layer of security but, overall and on balance, I am not quite persuaded that their absence made the process insecure (in the context of CASS 6.2.2R) or means HSDL did something wrong in the conversion and deposit process.

Sale of the shares

The CASS rules say that the safeguarding duty includes, in seemingly equal measure, a firm's responsibility to protect a client's asset from fraud as it does a firm's responsibility to protect the asset from diminution due to poor administration. Administration is relevant to the process applied by HSDL in selling the shares from the SDA. In a nutshell:

- Evidence suggests that share sales could take place either through the telephone or through the online service and that different security and identification measures applied for each. In this case, there is relevance in the measures for the online service because that is how the shares were sold.

- The ongoing security and identification measures for the online service were essentially based on the earlier versions of those measures applied at the outset of the online service – at the point in which the password was issued (in separate ways) and activated and at the points in which the password was then changed and re-issued in the same fashion. By the time of the individual sale instructions, all that appears to have been required was for the account holder to log in to the online SDA and then to instruct the relevant sale(s). No signature checks featured and, again, HSDL concedes this. The question is whether (or not) its online sales process (without signature checks) was reasonable. I provisionally conclude that it was.

- HSDL explains that the process relates to its need to balance security with efficient administration of share dealings. I agree. The CASS rule about protecting, under a firm's safeguarding responsibility, a client's asset from poor administration lends some support to HSDL's point – in addition to other rules from the regulator related to efficient executions by firms. Based on the reasonable understanding that adequate security and identification measures had been applied prior to activating the SDA's online service and that access to the SDA online can be done only by the account holder who positively passed those measures and uses the secure password, it does not appear unreasonable that HSDL did not apply further security and identification checks at each point of share dealing.

Remittance of the sales proceeds to NBA2

In straightforward terms, I do not consider it reasonable to suggest that HSDL was wrong to allow remittance of funds from the SDA to a bank account that had been nominated by Mr J for such remittances. I provisionally conclude that it did nothing wrong in this respect.

my provisional decision

For the reasons given above, I provisionally conclude that this complaint should not be upheld.

Roy Kuku
ombudsman