

The complaint

Mr and Mrs W complain that TWP Wealth Limited (TWP) won't refund them the money they lost as the result of a fraud.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, and based on the submissions of both parties, I understand it to be as follows.

In May 2020, TWP received an email, from who they thought was Mr W, requesting an urgent withdrawal of £40,000 from his investments. But unknown to TWP at the time, the emails were from fraudsters who had hacked Mr W's email account.

Believing everything to be genuine TWP entered into email communication with the fraudsters and recommended that the withdrawal be made up of two payments of £20,000, one from each of Mr and Mrs W's ISA accounts. The ISA funds were held on an investment platform, with a company I'll refer to as 'Firm A'.

The fraudster asked TWP for the funds to be sent to an account held with a bank I'll refer to as 'Bank A'. As Firm A didn't hold bank account details for Mr and Mrs W, it was necessary for a Change of Portfolio document to be completed for Firm A, to enable it to update its records and complete the transfer. This document was partially completed by TWP, but during the exchange of emails, the fraudsters were able to apply forgeries of Mr and Mrs W's signatures to the document and supply a forged copy bank statement, in order for the bank details to be updated. It followed that two payments of £20,000 were withdrawn, one from Mr W's and one from Mrs W's ISA accounts, and sent to bank account details controlled by the fraudster.

Mr W became aware of the issue, on 29 May 2020, when he received notification of the change of bank details from Firm A, but unfortunately this was after the transfers had already been made from Mr and Mrs W's ISA accounts.

Mr and Mrs W raised the matter with TWP as they considered there were a number of failures that allowed the fraud to take place. In summary they didn't consider TWP had applied a suitable level of due diligence in allowing the withdrawals to be made from the investments, and it had failed to follow correct procedures.

TWP looked into Mr and Mrs W's complaint and issued its final response on 1 September 2020 not upholding it. In summary it said the email it had received appeared to come from Mr W's genuine email address. It accepted that Mrs W should have been included in the email correspondence, as it had suggested taking money from her portfolio. If it had of done, it accepted she could have been alerted to the fraud. But it added that where it had received a Change of Portfolio details form, seemingly signed by Mrs W, it accepted this was her permission to proceed.

TWP said that before the withdrawal was completed it did call and speak to Mr and Mrs W to update them on the withdrawal. But it acknowledged that, while its agent did bring up the withdrawal, he was not specific enough in the conversation to give rise to any concern. So it agreed that if its agent had been more specific, during this call, Mr and Mrs W could have been alerted to the fraudulent withdrawals in time.

Overall, while it acknowledged it could have taken slightly different action in some areas of diligence, it also believed that other parties involved had also failed in their obligations, namely Banks A and B and Firm A. Unfortunately TWP was unable to recover any of the money that Mr and Mrs W lost.

Unhappy with TWP's response, Mr and Mrs W then brought their complaint to our service. One of our investigator's looked into it and thought the complaint should be upheld. In summary, he said while he recognised there were a number of factors that contributed to the loss Mr and Mrs W had suffered – the complaint he had to investigate was around Mr and Mrs W's assertion that TWP failed to prevent the fraud from happening. He didn't consider TWP had followed its own internal withdrawal procedures (in not obtaining written consent from Mrs W and in not having a clear discussion with Mr and Mrs W, before allowing the withdrawals to take place). It was our investigator's view that had TWP followed its procedures it would have prevented the fraud from happening. Our investigator recommended that TWP refund Mr and Mrs the £40,000 (£20,000 each) that they had lost, along with interest.

Mr and Mrs W agreed with our investigator's view. TWP didn't agree, in summary it said the signature on the withdrawal form had matched, it didn't know the email had been hacked and the withdrawal didn't raise any suspicion, as Mr and Mrs W had previously spoken to it about making a sale. It agreed it could have done better, but maintained that other parties had also failed in their due diligence and should also bear some responsibility.

As agreement couldn't be reached the complaint has now been passed to me for a 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.

Having very carefully considered all the evidence and information that has been provided, I agree with the investigator, and for broadly the same reasons.

I haven't given a detailed response to all the points raised. This is deliberate; ours is an informal service for resolving disputes between financial businesses and their customers. While I've considered all the submissions, I've concentrated my findings on what I think is relevant and at the heart of this complaint.

I'm aware that TWP has said that other parties were also involved in the loss that Mr and Mrs W suffered. But it's important for me to say, this decision focuses solely on the actions of TWP, whom this complaint is against.

I've taken into account what I'd expect of TWP in the circumstances of receiving a request for a withdrawal from an investment. To this end, I've noted that the Financial Conduct Authority (FCA) sets out the following rules in its Senior Management Arrangements, Systems and Controls sourcebook (SYSC):

SYSC 6.1.1 R

A firm must establish, implement and maintain adequate policies and procedures sufficient to ensure compliance of the firm including its managers, employees and appointed representatives (or where applicable, tied agents) with its obligations under the regulatory system and for countering the risk that the firm might be used to further financial crime.

SYSC 3.2.6 R

A firm must 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.

For the avoidance of doubt, financial crime is defined as:

any kind of criminal conduct relating to money or to financial services or markets, including any offence involving:

(a) fraud or dishonesty; or

(b) misconduct in, or misuse of information relating to, a financial market; or

(c) handling the proceeds of crime; or

(d) the financing of terrorism;

in this definition, "offence" includes an act or omission which would be an offence if it had taken place in the United Kingdom.

In view of the above I am satisfied that TWP was required to have adequate policies and procedures in place to meet its regulatory requirements to counter the risk that it might be used to further financial crime.

I am also mindful that FCA Principle 6 sets out that:

'A firm must pay due regard to the interests of its customers and treat them fairly.'

I've thought about this in relation to the actions TWP took in Mr and Mrs W's case. From what I've seen TWP do have policies and procedures in place, and it's shared with us an extract from its 'administration process manual', detailing its process for withdrawals, which says:

Withdrawals

It is important that you refer to our policy on Financial Crime Risk Assessment. ALL withdrawals received by email must be followed up by a telephone call to the client to confirm that request has come from them.

If we receive the request by telephone, please ensure we have identified the client through security questions (refer to policy) and ask them to follow up the request in writing (email is sufficient).

We must not facilitate ANY withdrawals without the 2-way check (verbal and in writing).

In order to determine whether this complaint should be upheld I have considered whether the systems and controls that TWP was required to have in place, to counter the risk that the business might be used to further financial crime, were sufficient and whether it implemented them accordingly. And whether any failure to implement its procedures, or if any of the actions TWP took, contributed to Mr and Mrs W's loss.

Here it doesn't seem in dispute that TWP hasn't followed its own procedures. It has recognised in its response to Mr and Mrs W and in its submissions to this service that it could have taken different action in respect of its diligence.

TWP's procedures indicate that it must not facilitate *any* withdrawals without carrying out a two-way check (both verbally and in writing). Considering the circumstances of this case, I can understand why TWP wouldn't have contacted Mr W in writing outside of the emails it had received. After all it thought it was already communicating with him in writing and it didn't know that it was actually exchanging emails with a fraudster. But, and TWP acknowledge this, as funds were also being withdrawn from Mrs W's investment, it also had a responsibility to check with Mrs W in writing, but it failed to do this.

When thinking about the second part of TWP's two step check that forms part of TWP's procedures (checking verbally) I am mindful that TWP has said that a telephone conversation took place, between Mr and Mrs W and TWP's agent, before the withdrawals were made. Unfortunately the call wasn't recorded, but TWP's agents' recollections were that he was calling Mr and Mrs W for a catch up, to check both were ok, but that he did mention the transactions and that the money would be with them as soon as possible. Mr and Mrs W (who were both on the call) don't recall a planned withdrawal from their account being mentioned. Of course, I can't know for sure what was discussed in the call, but in any event TWP has acknowledged that the call its agent made was not specific enough, in terms of discussing the request to withdraw funds.

I've gone on to think about whether TWP's failure to follow its own internal policies and procedures made a difference. And having thought about this carefully, I think it did. I'm persuaded that TWP's failure to carry out a two-way check, in line with its own procedures, resulted in the loss for Mr and Mrs W. I think this is supported by TWP's own submissions, where it's said that if it had emailed Mrs W, she could have been alerted earlier to the fraud and that had its agent been more specific (when calling Mr and Mrs W), they could have been alerted to the fraudulent withdrawals in time. I'm persuaded that it's more likely than not, had TWP taken steps to validate the withdrawals in line with its own procedures, the fraud would have been prevented and Mr and Mrs W wouldn't have lost the money they did.

I'm mindful that TWP has said that it carried out other checks, outside of its documented process, such as getting signed forms and checking bank statements. But the procedures it has in place, to protect its client, set out clear and specific steps and say that verbal and written consent is required. That other, alternative checks, may have been carried out doesn't detract from TWP's responsibility to only proceed with a withdrawal once it's satisfied its own internal processes that are in place to protect both itself and its clients, have been followed.

I'm aware that TWP considers that other parties are also to blame. But I can only consider the complaint in front of me, which is against TWP. And I think it's fair in the circumstances that it compensates Mr and Mrs W for their losses in full. I say this because I'm satisfied that TWP's failure to follow its own internal procedures was pivotal in causing Mr and Mrs W to lose this money. The losses they sustained were directly as a result of TWP not confirming the withdrawals with them both clearly verbally and in writing.

I'm aware that the main culprits here are the fraudsters who committed this crime. But as I've explained above, without TWP's failings, Mr and Mrs W wouldn't have lost this money from their ISAs and these losses could have been fully avoided if TWP had carried out the appropriate checks, in line with its own policies and procedures. So I consider it fair and reasonable in the circumstances that it should compensate Mr and Mrs W for any losses they suffered. If TWP believes that the other parties' actions have contributed to these

losses, they are of course free to pursue this directly with them – but only after having paid Mr and Mrs W in full.

I'm aware that some of those involved in this fraud have been caught and convicted and that, in passing sentence, the judge awarded Mr and Mrs W £250 compensation. So as to avoid any betterment, it is fair and reasonable that I reflect that award in the redress I ask TWP to pay.

Putting things right

For the reasons explained above TWP Wealth Limited should now;

- Refund Mr and Mrs W £40,000, being the 2 x £20,000 they lost from their ISA accounts (less £250 awarded to Mr and Mrs W through the Courts).
- Pay interest on this amount, at Mr and Mrs W's respective ISA rates, from the date of loss to the date of settlement.

My final decision

My final decision is that I uphold this complaint against TWP Wealth Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W and Mr W to accept or reject my decision before 22 September 2022.

Stephen Wise
Ombudsman