DRN-4476271

The complaint

Mr W is represented by his solicitors. He and his solicitors say Financial Administration Services Limited – operating as Fidelity International ('FI') – failed, between December 2021 and January 2022, to safeguard his Individual Savings Account ('ISA') assets, to warn him about fraud and to protect his assets from the Authorised Push Payment ('APP') fraud that they were subjected to at the time – leading to a total financial loss of around £256,000.

FI sympathises with Mr W's situation and his financial loss, but it disputes the complaint and says it discharged its safeguarding and fraud prevention obligations in his case.

What happened

Mr W's household was subjected to an APP fraud campaign between December 2021 and January 2022. He was the second victim of the fraud. His wife was targeted first. His solicitors' submissions and chronology of events begin with the facts of the fraud she was subjected to. The events concerning her case have been addressed separately in her complaints. The background to Mr W's case feature the same events, and can be summarised as follows:

- Between 2 and 15 December 2021 Mr W's wife and her assets were targeted for the same APP fraud, from the same fraudsters, that was subsequently applied to him.

- During this period, she received repeated and persistent contacts and communications from the fraudsters purporting to be from the regulator. They gained her confidence and convinced her that access to her financial assets had been compromised, that the assets were being subjected to fraud, that the matter was under regulatory investigation (overseen by them), that she needed to keep this information to herself, that she could not disclose the matter to the account providers for her financial assets because their staff could be implicated in the fraud, and that she needed to follow their [the fraudsters'] guidance and cooperate with their investigation in order to safeguard her assets.

- She was then manipulated and coached into taking steps that resulted in her withdrawing cash holdings from her investment accounts, liquidating investments within those accounts and withdrawing the proceeds, moving all the withdrawals into her nominated bank account and then transferring all the withdrawals from her bank account into a crypto currency wallet controlled by the fraudsters. At this point, and thereafter, the fraud was concluded. She lost all the transferred funds.

The fraudsters then targeted Mr W from 16 December 2021 onwards, and up to 21 January 2022. During this period, they used the same method they had applied to his wife. Withdrawals were made from his FI ISA (on 20, 23, 24 and 29 December 2021) into his nominated bank account, and they were eventually transferred into the crypto currency wallet controlled by the fraudsters. The present case is about his losses in the FI ISA. He incurred losses elsewhere, as part of the same APP fraud campaign, which have been addressed in a separate complaint.

Mr W and his wife were assured by the fraudsters that their [false and so called regulatory] investigation will conclude and their funds will be returned by February 2022. No return of funds happened in that month, or since. His solicitors mainly say that FI failed to give him effective warnings about fraud during his liquidation and withdrawal activities; failed to properly query the withdrawals, given how unusual they were; failed to detect and warn about the risk of exposure to fraud in his activities and to block the transactions within them; and failed to detect suspicious activities in the ISA at the time (including his increased account log-ins) which were outside the norm for him.

One of our investigators looked into the complaint. He empathised with the fact that Mr W had fallen victim to a cruel scam, but he concluded that the complaint should not be upheld.

He mainly found that –

- Comments in the complaint about FI's complaint handling process and its response to Mr W's solicitors' Data Subject Access Request ('DSAR') cannot be addressed because neither is a regulated activity.

- FI provided an execution only service for the ISA. However, regulatory standards set out in the Senior Management Arrangements, Systems and Controls ('SYSC') section of the regulator's Handbook require firms to have, maintain and apply effective and proportionate policies, procedures, systems and controls to counter the risks of being used to further financial crimes (including fraud). FI held this responsibility.

- There was nothing in Mr W's online ISA transactions that would have prompted FI's suspicion. He had completed the online security checks to access the ISA, and given that it provided an execution only service, FI would not have been expected to intervene in his transaction decisions. His withdrawals were remitted to the verified nominated bank account for the ISA, so there was nothing in this respect to alert FI to the chance of fraud.

- His log-in activities were not unusual for someone at retirement age who was liquidating his account.

- FI did not provide fraud risk warnings, it did not conduct any risk assessments related to the implications of the ISA withdrawals and it did not suggest to Mr W that he should speak to a financial adviser. It would have been good practice for FI to have done these, and the fact that it did not is a shortcoming. However, given that he was under the fraudsters' instruction to conceal what was happening, even if FI had intervened in these ways there is no guarantee Mr W would have listened to its intervention.

- His solicitors have mentioned personal circumstances at the time that made him vulnerable, but FI was not informed about these circumstances until after the fraud event/period. Therefore, it could not reasonably have been expected to take extra precautions specifically in that respect.

Mr W's solicitors disagree with this outcome.

They say that the investigator's views fails to properly take into account the effects of the sophisticated nature of the fraud Mr W was subjected to; that FI had a duty to query and block the extremely irregular transactions (involving complete liquidation of the ISA) regardless of the receiving bank account being that nominated for the ISA; that his past

transactions stood in contrast to those in December 2021, so the latter transactions should have stood out as unusual and suspicious; that it is wrong to say Mr W would not have listened to intervention from FI, it is an irrelevant conclusion and there is no evidence to support it; that it is entirely likely that effective warnings from FI would have resulted in him realising he was being defrauded; and that the investigator's finding about FI's shortcoming in failing to provide warnings and notices establishes its breach of the duty of care it owed Mr W and its responsibility for his losses.

The investigator was not persuaded to change his views and the matter was referred to an Ombudsman.

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 done so, I have reached the same conclusion as the investigator's – I do not uphold Mr W's complaint.

I issued the decisions in his wife's complaints about her losses in the same APP fraud campaign. I also issued the decision in the other complaint he submitted to this service about the losses he incurred in other investment accounts, due to the same fraud.

As stated above, the facts of Mr W's case share the same background as his wife's, and the same approach taken by the fraudsters towards her was subsequently applied to him. Therefore, there is significant common ground between his and his wife's cases. I did not uphold her complaints, and I did not uphold the other complaint he submitted.

Before treating the crux of the present complaint, I wish to address the expressions of dissatisfaction that Mr W's solicitors have made about FI's complaint handling conduct. I make no finding on this matter because it is beyond my remit to do so.

I can determine complaints about regulated activities, like the safeguarding activity in Mr W's core complaint. As the investigator explained in his views complaint handling, in isolation, is not a regulated activity. It is also not an ancillary activity connected to the conduct of a regulated activity. Sometimes a complaint to a firm and its alleged mishandling of it might form a part of the substantive case. If so, addressing the firm's complaint handling might be a necessary part of determining the overall complaint. Mr W's complaint is not that type of case. Its subject (and the damage caused in it) happened and concluded before the complaint to FI, so the complaint handling process is an isolated matter and is one outside my remit.

The above conclusion also applies to the comments made on Mr W's behalf about FI's handling of the DSAR. If he and his solicitors consider there has been a wrongdoing in that process they can consider approaching the Information Commissioner's Office.

As I said in the other decision I issued, the fact that Mr W was, and remains, the victim of a sophisticated and deplorable APP fraud campaign is beyond question. FI has acknowledged this. The investigator did the same and I have been mindful of this throughout my consideration of his case. I understand the emphasis that his solicitors have placed on this fact. However, it is also important to note the following:

- FI had no knowledge of the background events as they happened in December 2021. Mr W and his wife realised they were victims of the fraud in February 2022, and only then was FI informed about what had happened. In other words, as important as it is

to give due regard to the effect of the fraud upon him, as it happened, that has no bearing on FI's position in the matter.

- Mr W was exposed to the sophisticated nature of the fraud, but FI was not. His solicitors say FI ought to have applied certain minimum safeguards especially because it should have known how sophisticated APP, and other, frauds can be. That is a reasonable argument and I address it below. If their argument also seeks to establish that Mr W bears no fault in the matter because he was unduly influenced by very sophisticated fraudsters, I do not disagree. However, FI did not know that at the time. It did not know what was happening behind his actions, so an argument that there is no fault on his part does not automatically mean fault rests with FI. FI's responsibility remains a separate consideration.

FI provided an execution only service for the ISA. Nevertheless, the SYSC provisions created regulatory obligations that it had to discharge. In addition to the regulatory provisions, it would have received, over time, other information and guidance from the regulator concerning the need for it to proactively prevent fraud and avoid the facilitation of fraud in its operations. As such, FI was responsible for safeguarding Mr W's assets and for protecting them from the risk of fraud.

However, FI's responsibilities applied in the context of its execution only service, so it could and did not give advice, and it could and did not get involved in Mr W's decisions concerning the ISA. It explained to the investigator that automated safeguards existed/exist within the online process for logging into the ISA, conducting online transactions in the ISA and making withdrawals from it. It argues that Mr W did all these things online, so those safeguards were applied and it was alerted to nothing suspicious because they were all done by him, so there was nothing suspicious about that. It also highlights that the withdrawals were made to the verified nominated bank account for the ISA.

FI concedes that it did nothing more to safeguard the ISA beyond the automated safeguarding measures that were applied during his use of the ISA online. There was no manual intervention on its part and it did not speak to him or his wife until after it was informed about the fraud. Therefore, the main questions to answer are:

- Should FI have done more to protect Mr W's ISA in December 2021, and/or to inform him about how his actions at the time potentially created exposure to the risk of fraud?

- If so, would it have made any difference to Mr W's position, or to the ISA, at the time?

With regards to the asset liquidations in the ISA, I do not consider that FI was obliged to intervene. Mr W conducted the liquidations himself, having logged into the online ISA account. There was no indication that online access to the ISA had been compromised, because it had not been compromised. From FI's perspective, they were liquidations carried out by the ISA's owner in an execution only ISA. That would have been commonplace across its ISA operations and would not have caused suspicion, even if it was the first time it had happened in Mr W's case. As far as it was concerned he could have done that for a variety of different reasons. I have not seen evidence that it should have enquired further to discover the reason, that was of no concern to FI and it was a matter only for Mr W. Furthermore, in terms of safety, it is noteworthy that before the withdrawals were made the liquidation proceeds remained in the ISA, so they remained *safe*.

When the liquidation proceeds and cash were taken out of the ISA the situation changed. FI was responsible for applying additional safeguards at these points, because the funds were

going outside its control and it was obliged to ensure that was happening safely.

Primarily, FI says it achieved this by ensuring the withdrawals could only be made to the verified nominated bank account for the ISA, which is what happened. I accept this was the case, but I also note and agree with a question put to FI by the investigator in this respect. He asked about the safeguards FI had in place to monitor and address withdrawal activities that were potentially suspicious.

FI explained that it did not apply a withdrawal value threshold for this purpose, instead it monitored other specific factors. It provided us with some information about these factors but explicitly said the information is *confidential*. This decision will be published. Neither I nor this service wish to enable a future/potential fraudster's knowledge of the information FI has shared with us, so I will not present that confidential information in this decision. However, I confirm that I have considered it. It shows that FI did apply additional safeguards for some withdrawals.

Nevertheless, I have considered whether (or not) the withdrawals in Mr W's case should have prompted a form of manual intervention by FI. On a finely balanced basis, I find that in the circumstances of his case the withdrawals could have prompted such intervention, but I do not have enough grounds to say that they *should* have.

There were substantial total withdrawals made on each of the first three withdrawal dates. I do not suggest the fourth and final withdrawal/date is insignificant, but almost £250,000 of the total of all withdrawals (which was around £256,000) had been withdrawn over the first three dates, so they could be viewed as the main high value withdrawals that, Mr W could argue, should have prompted FI's attention.

The automated process catered for the withdrawals, and because value thresholds did not apply they did not prompt any manual intervention by FI. It is beyond my remit to dictate how FI should conduct its operations. However, withdrawal value thresholds are commonly used by firms as a meaningful way to monitor withdrawals that could potentially be suspicious or, at least, as a way to give firms the opportunity to inform customers about fraud risks associated with their withdrawals. It would not have been unreasonable to expect FI to apply them. However, the fact remains that FI did not operate in this way, so its system did not give it cause to intervene.

Mr W's solicitors will argue that, regardless of how its system did or did not operate, FI's regulatory obligations meant it had the duty to intervene in response to his unusually increased logins at the time, the complete liquidation of his ISA and the substantial withdrawals from the ISA (which emptied it). They say all were suspicious in the circumstances of his case. In addition, they say the investigator's finding about FI's shortcoming, in terms of its failure to give warnings/notices, establishes their argument.

Even if the correct conclusion is that FI should have intervened for the above reasons, wider evidence shows that it would not have made a difference. This is an important finding. My task is to determine whether (or not) FI's alleged inaction facilitated the APP fraud. If, as I find and explain below, the fraud (and losses) would probably have happened regardless of any reasonable intervention from FI then the complaint fails. The investigator found similarly, but Mr W's solicitors said his finding was baseless. I disagree.

A credible basis for the finding exists in Mr W's other complaint. In that case, there were verbal and written interventions by the relevant account provider between 20 and 23 December 2021. During this period Mr W was put through a formal questionnaire about the substantial withdrawal he was making. The fraudsters had coached and prepared him for the possibility of this, so he followed their guidance and disclosed nothing about the background

events to the provider. He gave answers to the questionnaire that created no grounds for concern or suspicion.

During the same period the account provider also sent him written information that included notice about the risks of fraud that he should be aware of in the context of his withdrawals. Borrowing from evidence in the other case, the information included – notice that "*It's a good idea to familiarise yourself with the sort of scams around at the moment. Visit our Security Centre for more information and learn how you can stay safe by clicking here*"; dedicated information about APP fraud (within the link in this quote) including about the need to be aware of fraudsters pretending to be from trusted organisations like the regulator, fraudsters telling the victim their assets are at risk, fraudsters saying the assets need to be moved into a safe place, and fraudsters telling the victim to give false reasons to their bank or other financial institution in order to make withdrawals.

The written information also described how APP fraud had increased significantly in 2021.

Mr W had the aforementioned warnings and notices, albeit from the other account provider, between 20 and 23 December 2021. This happened around the time of his first withdrawal from the FI ISA and before the three withdrawals that followed. Therefore, this was relatively early intervention. It was not from FI, it was from elsewhere, but it was intervention nevertheless. During this period, he had yet to move all the withdrawn funds into the crypto currency wallet that the fraudsters controlled, and by heeding the warnings and notices from the other account provider he could and probably would have avoided most, if not all, of his FI ISA losses.

The above is not intended as a criticism of Mr W. I am aware that his trust and confidence had been severely manipulated, abused and misused by the fraudsters at the time, so he believed them and genuinely believed his cooperation with them would help safeguard his assets. These were the reasons for his approach at the time. However, the above findings do address the question about whether (or not) intervention by FI would have made a difference.

There was no intervention by FI, but there were verbal and written interventions by the other account provider at a time that was very relevant to what was happening in the FI ISA, and in a closely connected matter – given that Mr W's action in all his accounts resulted from the same fraud campaign. The questionnaire queried his reason for making withdrawals, but he was so unduly influenced by the fraudsters that he responded in the manner they had coached him to (in a manner that raised no concern or suspicion). On balance, I consider that the same outcome would have applied if FI questioned him about the ISA activities. The written notices and warnings about APP fraud did not discourage him from following the fraudsters' instructions in the other case. On balance, I consider that if the same type of notices and warnings had been issued by FI they too would not have discouraged him from following the fraudsters' instructions for the ISA.

Overall and for the above reasons, I do not find that any reasonable intervention by FI would have made a difference to the safety of Mr W's position or the safety of his ISA at the time of the APP fraud. I have also considered the matter of vulnerability that has been cited in his case. It is of a personal nature and it does not need to be set out in this decision. FI was not aware of the matter at the time of the APP fraud, so I do not consider it to be a factor that should have influenced its approach.

Overall, on balance and based on all the reasoned grounds above, I find that FI cannot reasonably be held responsible for Mr W's losses.

My final decision

For the reasons given above, I do not uphold Mr W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 25 January 2024.

Roy Kuku
Ombudsman