DRN-4476272

The complaint

Mr W is represented by his solicitors. He and his solicitors say Hargreaves Lansdown Asset Management Limited ('HL') failed, between December 2021 and January 2022, to safeguard his pension and Stocks and Shares 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 almost £900,000.

HL 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, and he was the second victim of the fraud. His wife was targeted first. His solicitors' submissions and chronology of events include (and begin with) the facts of the fraud she was subjected to. The events concerning her case have been addressed separately in her complaints, but the background to Mr W's case that arises from those events 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 approach and method as they had applied to his wife. Withdrawals were made from his HL accounts (on 17, 20 and 22 December 2021, and on 7 January 2022) 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 HL accounts. He incurred losses elsewhere, as part of the same APP fraud campaign, which are subject to a separate complaint.

Mr W and his wife had been assured by the fraudsters that the conclusion of the [false] regulatory investigation and the return of their funds will happen by February 2022. Nothing happened in that month, or since. His solicitors mainly say that HL 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 the suspicious activities in the accounts at the time (including increased account log-ins), which were outside the norm for him.

One of our investigators concluded that Mr W's complaint should not be upheld, because, overall and in the circumstances as they were, HL could not reasonably have done more than it did. He mainly said:

- 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). This, alongside the regulatory principle requiring firms to uphold their customers' interests and treat them fairly, defines HL's role in the case.

- HL provided an execution only service for the accounts. Nevertheless, the facts show that it complied with its internal policy on spotting suspicious transactions. By having the policy and complying with it, it met the SYSC requirements.

- Withdrawals of the scale made by Mr W were not uncommon for someone at retirement age as he was/is. In addition, they were made to the nominated bank account (held with a regulated UK bank) for the HL accounts. Neither the withdrawals nor their destination would have raised HL's suspicion.

- HL conducted a telephone risk questionnaire with Mr W on 20 December; evidence shows that it made him aware of the potential risks and tax implications of the withdrawals and that he confirmed to HL he had taken advice from a regulated financial adviser; on 23 December HL sent him correspondence and guidance information about taking lump sums from his pension, which included warnings about investment scams and an invitation (and link) to visit HL's *Security* page for further information; and telephone recording evidence of the calls between the parties shows that Mr W behaved calmly and did not conduct himself in a manner that would have given HL cause to be suspicious.

- He was subjected to a cruel and sophisticated fraud in which he was extensively coached by the fraudsters, and was convinced he could not trust his account providers. It is unlikely that any intervention from HL would have made a difference to the outcome. He had even been coached to refer to the withdrawals being intended for a property purchase, in the event that his account providers questioned him about their purpose.

- Mr W's solicitors say HL should have been alerted by the unusually higher number of account log-ins by him at the time. Given his liquidation of the accounts, this would not have been unusual.

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

Mr W and his solicitors disagree with this outcome. They say the investigator's view fails to take fully into account the sophisticated nature of the fraud he was subjected to; that HL ought reasonably to have queried and blocked what amounted to extremely irregular transactions (complete liquidation of the HL accounts), regardless of the withdrawal destination being the nominated bank account; that he was led to believe the fraudsters were from the regulator and that his cooperation with them would protect his assets; that the withdrawals contrasted with his normal account use and profile; that, contrary to the investigator's finding, it is impossible to know whether (or not) Mr W would have referred to a property purchase if questioned about the purpose of his withdrawals; and that it is entirely likely that effective warnings from HL would have resulted in him realising he was being defrauded.

The investigator was not persuaded to change his view, 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 should declare that I issued the decisions in his wife's complaints about her losses in the same APP fraud campaign. As stated above, the facts of his 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 that resulted from broadly the same grounds on which I have concluded that Mr W's complaint against HL is not upheld.

The fact that Mr W was, and remains, the victim of a sophisticated and deplorable APP fraud campaign is not disputed in this case. HL and the investigator have expressed their empathy in this respect, and I do the same. I understand the emphasis that his solicitors have placed on the fact that he was subjected to such a fraud. However, my task is to determine his allegation that there were failings by HL in the matter which facilitated the fraud. For the reasons given below, I do not find there were such failings.

There is not, and there should not be, doubt over the regulatory obligations HL was expected to discharge during the events in this case. Those obligations are clear in the relevant SYSC provisions and regulatory principles that the investigator quoted and referenced. HL would also have been aware of information to firms from the regulator over time about their responsibilities to have (in their operations) and apply measures for fraud prevention and the avoidance of fraud facilitation. For these reasons, HL had a duty to safeguard Mr W's assets, to protect them from the risk of fraud and to inform him on how to do the same.

His solicitors say HL failed to discharge this duty, so the main issues to determine are what HL did; whether (or not) that discharged its regulatory obligations; and whether (or not), it ought reasonably to have done more.

HL's involvement in the matter began when Mr W's wife, who was defrauded first, used its online platform to liquidate assets in her HL accounts. However, the campaign had begun earlier.

HL had/has nothing to do with the fraud campaign in the background, beginning in early

December 2021, during which the fraudsters maintained contact with Mr W and his wife, and manipulated them into facilitating the fraud against themselves. It is a fact that HL was uninformed, and that it remained unaware, of this background during the liquidation and withdrawal events that followed. It first learnt about this background, from Mr W's wife, in February 2022, around a month after the fraud campaign had concluded. It is therefore important to consider the events of which HL was aware, and in which it was involved. They were essentially the asset liquidation and withdrawal activities/events within Mr W's HL accounts.

It is accepted that HL (including its online account operations) enabled the liquidation and withdrawal activities in the accounts. Without knowledge of the fraudsters' involvement, it had no reason not to enable these activities. The accounts belonged to Mr W, he was entitled to manage them however he wished, and HL provided an execution only service so it had no role to play in managing the accounts or the activities within them.

The asset liquidations in the HL ISA and pension accounts would not have triggered any meaningful safeguarding or asset protection concern. From HL's viewpoint, and without knowledge of the background, any record on its system about the liquidations would have indicated no more than investment, and/or a personal, decisions to liquidate by Mr W. Therefore, the liquidations would not have raised any suspicion. They happen commonly in these types of accounts, for different reasons. There is no basis to find that HL should have done more to query the *reason* for the liquidations. It neither advised nor managed the accounts.

As stated in the previous section, cash and liquidated proceeds in the HL accounts were moved out of those accounts and into Mr W's nominated bank account, they were then eventually transferred into the fraudsters' crypto currency wallet. The initial movement of his [cash] assets out of the HL accounts certainly triggered HL's safeguarding and asset protection responsibilities, because that movement was to a destination outside its remit so it was obliged to ensure the movement was safe.

The withdrawals from the HL accounts were directed to the UK bank account that had been nominated (and verified) for such purpose. This provided its own layer of protection, by ensuring money taken out of the HL accounts that belonged to Mr W was paid into the verified UK bank account that also belonged to, and was nominated, by him. In other words, nothing about the destination of the withdrawals was, and would have been, suspicious or unsafe to HL.

From the ISA, £90,000 was withdrawn on 17 December 2021, £99,999 was withdrawn on 20 January 2021, and two withdrawals totalling £134,990 happened on 22 December 2021. Having liquidated his pension assets on 18 December 2021, on 20 December 2021 Mr W asked HL for an Uncrystallised Funds Pension Lump Sum ('UFPLS') payment from his pension. His completed UFPLS application was received by HL on 29 December 2021, and on 7 January 2022 it remitted the net liquidation proceeds from the pension account (£570,350) to his nominated bank account.

The withdrawals required more diligence from HL in terms of protecting Mr W's assets, but this expectation should be balanced with his entitlement, as an account holder, to make withdrawals from his HL accounts without undue delay, interruption, or hindrance from HL – especially as they were execution only accounts.

HL's terms of service required it to apply additional checks for withdrawals over £99,999. There is evidence from 20 December 2021 that it sought to apply such checks in Mr W's ISA withdrawals. He called HL on this date attempting to enable single withdrawals from the ISA above this level. Telephone call recording evidence shows that HL applied its policy of

requiring a written instruction for such a withdrawal, and that it informed him of this requirement. HL did not receive the written instruction and followed up on the matter, it then learnt from him that he had decided withdrawals at the threshold were sufficient.

No single withdrawal from the ISA breached the £99,999 withdrawal threshold, but it is clear that three of them were close to the threshold, and that they could have been viewed as designed to avoid crossing it. There is also provision within HL's terms prompting it to look into *repeated* withdrawals below the threshold. Therefore, I have considered if the three noted withdrawals should have raised HL's suspicions.

On balance, I am not persuaded that they should have. In hindsight, they can be considered with the knowledge of the background fraud that we are now aware of. However, at the time HL did not have such knowledge. From its viewpoint they were online withdrawals, spaced out over six days, from an ISA by its owner to his nominated and verified UK bank account. Furthermore, HL had heard from Mr W during the withdrawals – during its conversations with him about withdrawing above the threshold – so it knew the withdrawals were genuinely being made by him. The three withdrawals did not constitute sufficient repetition, in its view, to prompt further safeguarding enquiries. In the above context, I am not persuaded that it did anything wrong in this respect.

With regards to withdrawal of the net liquidation proceeds from the pension, there was more intervention by HL and additional enquiries, which happened over the telephone and in writing.

There was another telephone conversation between the parties on 20 December 2021, in which Mr W enquired into withdrawing the pension liquidation proceeds. A risk questionnaire was applied by HL for this purpose. Evidence of the questionnaire shows his responses. Based on those responses, HL established, amongst other things, that he was making his own decision about the withdrawal; he was in receipt of advice from Pension Wise and from his own regulated financial adviser; he understood the risks to his pension and retirement arrangements in making the withdrawal; he understood the investment and tax implications of the withdrawal; and he was aware of and understood the risk of exposure to investment scams especially for those who had withdrawn capital from their pension.

On 23 December HL sent Mr W a message setting out the steps he needed to take for the UFPLS application and the matters he should consider in doing so.

Relevant to his complaint, the message said – "*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*". The underlined link's destination included an information page about APP fraud. This page essentially described exactly what Mr W and his wife were being subjected to at the time. It said customers should be wary of common signs of such fraud, including fraudsters pretending to be from trusted organisations like the regulator; fraudsters telling them their assets are at risk and that they need to be moved into a safe place; and fraudsters telling them to give false reasons to their bank or other financial institution in order to make withdrawals. The page also described how APP fraud had increased significantly in 2021.

The UFPLS form was also linked to the message and it had an attached guide which included notice about tax implications and warning about scams targeting people at retirement (and signs to look out for).

HL did enough between 20 and 23 December 2021 to raise enquiries and to give warnings that gave Mr W multiple opportunities to share what was happening in the background. Had he done that, HL would undoubtedly have protected his assets from the fraudsters, from the

point of his disclosure onwards, and that would have saved most, if not all, of his losses. He did not disclose the background to HL and, unfortunately for him, there was nothing in his interactions with HL that could reasonably have triggered its suspicion. This is not intended as a criticism of Mr W. I have already acknowledged that he was subjected to a deplorable manipulation of his trust and confidence by the fraudsters, in which they abused and misused both. He sincerely believed them and believed he was safeguarding his assets through his cooperation with them and through the withdrawals. These were the reasons he did not disclose any of the background to HL.

However, the complaint he and his solicitors have submitted seeks to make HL responsible for his financial loss, so the point above should be made. On balance, grounds for such responsibility do not exist. Without being told about what was happening in the background and in the absence of anything suspicious in the liquidations and withdrawals, I do not consider that HL ought reasonably to have done more than it did. It was mindful of its regulatory obligation to protect Mr W's assets from fraud and to avoid facilitating fraud. It discharged that obligation, and the evidence summarised above shows this. It had a policy and practices for this purpose and it applied them. Nothing arose during their application to give it cause to query further or to block the withdrawals. Indeed, taking such actions without good reason to do so could have amounted to unreasonable conduct.

I have considered the specific matter of vulnerability presented in Mr W's case. The details are of a personal nature and they do not need to be set out in this decision. Available evidence confirms that HL was unaware of, and uninformed about, it until around March 2022, months after the events of December 2021 and January 2022. Therefore, this factor could not reasonably have been expected to influence its approach.

Overall, on balance and based on all the reasoned grounds above, I find that HL 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 24 January 2024.

Roy Kuku
Ombudsman