

complaint

Ms J, through her representative, complains that Time Financial Management Ltd allowed a fraudulent withdrawal to be made from one of her investments.

background

I issued a provisional decision on 26 January 2016. A copy of this decision is attached and it forms a part of this final decision. In my provisional decision I set out the reasons why I was minded to uphold the complaint in part.

I asked both parties to let me have any further comments that they wanted to make.

Ms J's representative responded to say, in summary, that the poorly constructed emails and their timing should have made Time suspect they might not be from Ms J.

He also said the form Ms J signed didn't say a new bank account was being opened, and she'd assumed the money was being invested on her behalf.

Ms J's representative said he found it difficult to understand why she was being held partly responsible for the transfer.

Time responded to say that the emails it received used the same type face and sign-off as Ms J. It didn't think it was unusual for a part withdrawal to be made from investments when funds were needed urgently. It didn't consider it had to contact Ms J by phone, and thought it was reasonable for Ms J to have known what 'dis-investment' meant.

Time said Ms J was responsible for checking the form before she signed it. It didn't think it was fair that Time was being asked to pay compensation for the criminal acts of others.

my findings

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

I've considered the further points that have been made, and understand why both sides feel that the other party was responsible for the transfer.

I appreciate why Ms J might consider Time should have immediately realised the emails weren't from her. But I accept that it isn't always possible to identify fraudulent communications from the outset. When I take account of the evidence overall, I don't consider it would be reasonable to find Time fully responsible for the transfer.

I also accept that Ms J signed the transfer authority and that Time acted on her instructions. But I remain mindful of Ms J's condition which makes it difficult for her to understand financial matters. It seems her mother sat in on her meetings with Time, so I think it's likely that Time knew about this.

From what I've seen, I think Time did consider Ms J's instructions were a little unusual. And given Ms J's particular circumstances, I still think it would've been reasonable for Time to have properly checked that she understood the instructions she was giving.

Overall, I haven't seen enough evidence to persuade me to depart from the position set out in my provisional decision.

my final decision

My decision is that I uphold this complaint in part. I direct Time Financial Management Ltd to pay to Ms J:

1. An amount representing one half of the amount withdrawn from her Nucleus general account in July 2014 (before the deduction of charges), plus interest at an annual rate of 8% simple from the date of withdrawal to the date of settlement of this complaint.

Income tax may be payable on the interest element of my award.

2. £300 for the trouble and upset this matter will have caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J's representative, on behalf of Ms J, to accept or reject my decision before 7 April 2016.

Caroline Stirling
ombudsman

COPY OF PROVISIONAL DECISION DATED 26 JANUARY 2016.

complaint

Ms J, through her representative, complains Time Financial Management Ltd allowed a fraudulent withdrawal to be made from one of her investments.

background

At the end of May 2014, Ms J rearranged her investments following advice from Time. In June 2014, Time received a fraudulent email request to withdraw money from one of Ms J's investments. Time didn't realise the email wasn't from Ms J, and sent paperwork to her so that the withdrawal could be made, and her bank details changed.

Ms J thought the paperwork was part of the overall rearrangement of her investments, so she signed it. The withdrawal was made and transferred to a fraudulent bank account.

The fraudulent transaction was discovered when Ms J made a genuine withdrawal request later in 2014.

Our adjudicator didn't recommend the complaint should be upheld. Ms J hadn't told Time her email account had been compromised, so he didn't think it was unreasonable for the business to continue to communicate with her by email.

Time's paperwork was sent after it had completed the rearrangement of Ms J's investments. So the adjudicator thought this should have prompted Ms J to check why she was being asked to sign the forms. Had she done so, the adjudicator thought it was likely the fraudulent withdrawal would've been avoided.

Ms J didn't agree with the adjudicator's conclusions, so the complaint has been passed to me.

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 accept that when Time received the fraudulent emails, it didn't know that Ms J's email account had been compromised. It seems Ms J didn't know that either.

Reading the fraudulent emails, the poor grammar would suggest that the writer is not a native English speaker. But I can see that this might not have immediately obvious to Time when it thought the emails were coming from Ms J.

Ms J's investments had only just been rearranged, so the timing of the withdrawal request was unusual. Time seemed to think so too, as it did ask whether something unforeseen had happened, and whether the money would be replaced. The fraudulent response wasn't particularly detailed. At this point, I think it would've been reasonable for Time to suspect that it might not be from Ms J.

I accept that Time wrote to Ms J, and she completed the paperwork that allowed the transaction to go ahead. But Time assumed it had been liaising with Ms J, and that she would understand what the paperwork was for.

Ms J has a condition that makes it difficult for her to understand financial matters, and she has said that Time knew this. Time had completed the investment rearrangement, so it considered Ms J should've checked why she was being asked to sign more forms.

Ms J did ask what 'dis-investment' meant. Time responded, but I'm not persuaded that its answer would've been particularly clear to Ms J, or alerted her to the fraudulent withdrawal. Taking account of Ms J's circumstances, I think Time should've taken particular care to make sure she properly understood everything it was doing on her behalf.

When I take account of the evidence overall, and Ms J's particular circumstances, I think Time could have done more to make sure she understood the instructions she was giving. Had it done so, I'm satisfied the fraudulent withdrawal wouldn't have happened.

I appreciate that Ms J has difficulty understanding financial matters. But one of the instructions she gave was to open a new account with a bank where she wasn't a customer. I think it might have been reasonable for her to question this with Time or her parents. Had she done so, I think it's likely the fraudulent withdrawal could have been avoided.

So I think Time should compensate Ms J for some of the money she's lost. It should also pay an amount to Ms J for the trouble and upset caused.

my provisional decision

My provisional decision is that I intend to uphold this complaint in part. I intend to direct Time Financial Management Ltd to pay to Ms J:

1. An amount representing one half of the amount withdrawn from her Nucleus general account in July 2014 (before the deduction of charges), plus interest at an annual rate of 8% simple from the date of withdrawal to the date of settlement of this complaint.

Income tax may be payable on the interest element of my award.

2. £300 for the trouble and upset this matter will have caused.

Caroline Stirling

ombudsman