DRN-4460850

The complaint

T, a trust, complains that TTT Moneycorp Limited (Moneycorp) didn't do enough to prevent the loss it suffered when it transferred money to an account held with it. Mr T brings the complaint on behalf of the trust.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here. T transferred funds to a company I'll refer to as G. At the time T believed these to be in respect of the purchase of Loan Note Investments (LNI). £20,000 was sent in March 2018 and a further £40,000 was sent on 5 March 2019. Both payments arrived in an account in G's name which was held with Moneycorp.
In October 2020 the Financial Conduct Authority (FCA) published a notice saying that G had entered preliminary bankruptcy proceedings. T had complained to Moneycorp in September 2020. The crux of the complaint was that G had defrauded T and that Moneycorp were liable as they had failed against various obligations to prevent this. They sought reimbursement of the funds lost (plus interest) as a remedy to the complaint.

Moneycorp responded and in summary didn't agree they'd done anything wrong. The matter was referred to our service and one of our Investigators didn't think we could consider all of T's complaint. And for what we could consider, she didn't recommend it should be upheld. T disagreed and asked for an Ombudsman to consider the complaint.

I've already issued a decision setting out our jurisdiction and essentially that I can only make a finding in relation to any act or omission by Moneycorp which took place on or after 31 January 2019. And in September 2023 I issued a provisional decision as to the merits of the complaint. In that decision I said:

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

T has made detailed submissions in support of its complaint. I've read and considered all of these, but I don't intend to respond in similar detail. I've kept my findings to what I believe to be the crux of the matter and in sufficient detail to explain my decision. This isn't intended as a discourtesy and is just a reflection of the informal nature of our service. We are intended to be an informal alternative to the courts. We aren't intended to forensically investigate matters and are tasked with resolving complaints with minimal formality.

T have questioned how a determination can fairly be made when certain information can't be shared, meaning it can't be challenged. Our service isn't exempt from data protection law. We are able to handle a wide range of data due to our statutory role and this can include sensitive and third-party information. And the rules that apply to our service, allow us to accept such evidence in confidence. Where information relates to a third party, or is commercially sensitive, it can't freely be shared. But T are correct that we must still follow the principles of natural justice. As such, we can (and upon request do) share information that we've relied upon in reaching our outcome. But this may be by describing what it is

we've seen, or by providing limited or redacted parts of the evidence we've received. This enables us to both provide each side with an opportunity to comment, and to ensure we process data in ways that are compliant with our obligations.

Much of T's submissions to our service involve legal arguments including that Moneycorp were acting as an agent of its accountholder 'G' and that they owe T a duty of care. T holds Moneycorp responsible for being either complicit or reckless with regard to what it says are misrepresentations by G.
I don't agree that an authorised payment institution (API) like Moneycorp can fairly be considered as an agent of its customers. G had a customer relationship with Moneycorp, but nothing I've seen persuades me that the relationship between the parties was more than that. What T seems to be suggesting would mean that in any case where an API provides a payment service to those who are acting fraudulently, there is an agency relationship between the parties such that the bank would be liable. This isn't the case.

Moneycorp provided an account and payment services to G. Moneycorp had various obligations with regard to Anti-Money Laundering (AML) and general obligations to be alert to fraud and scams and to act in their customers best interests. But I don't agree that they were required to conduct detailed investigations into or have oversight of the activity of their customers as a matter of course, in the way that T seems to expect.

T have made much of the fact that Moneycorp's details were included on the LNI offer form as the account to receive funds. I agree this is the case. But Moneycorp have maintained throughout that they had no knowledge of the LNI issued by G. And I've seen nothing that persuades me they would or should have known this. This was an offer note issued by G, not Moneycorp, whose details were included in the context of where money should be sent. And if G misrepresented the account as an escrow account, I don't think that is something that Moneycorp are responsible for, as G and Moneycorp are distinct and separate legal entities, accountable for their own actions.

The details on the LNI form (and presumably included as part of the information transmitted along with the payment to Moneycorp) stated: "TTT Moneycorp Ltd GBP Client Safeguarding Account". It also provided the relevant sort code, account number and international banking account number (IBAN). The implication here seems to be that Moneycorp ought to have known that the funds weren't going into a 'client safeguarding account'.

The Payment Services Regulations 2017 (the PSRs) set out that a payment is sent according to a 'unique identifier'. This is the key information used to route the payment to the correct destination and payee.

The PSRs define a unique identifier as follows:

" ….. "unique identifier" means a combination of letters, numbers or symbols specified to the payment service user by the payment service provider and to be provided by the payment service user in relation to a payment transaction in order to identify unambiguously one or both of—

> *(a) another payment service user who is a party to the payment transaction;*
> *(b) the other payment service user's payment account"*

The effect of this is that for UK payments this is typically the account number and sort code. Other information may be provided as part of the payment instruction, but this is not part of the 'unique identifier', unless it has been specified as such by the payment service provider (PSP) – which is not the case here.

A payee name is not unique. A PSP could hold multiple accounts for persons with the same name, however, no two payment accounts share the same account number and sort code – this is unique to that specific payment account. Therefore, typically these details (not a payee's name) are considered the 'unique identifier'.

Section 90 of the PSRs states:

"(1) Where a payment order is executed in accordance with the unique identifier, the payment order is deemed to have been correctly executed by each payment service provider involved in executing the payment order with respect to the payee specified by the unique identifier"

The impact of this is that as long as the payees PSP processes the payment transaction in accordance with the 'unique identifier' provided and the funds are credited to the specified account number and sort code the payment is considered to be executed correctly.

This is further supported by the introduction of, in more recent years, a system called 'Confirmation of Payee' (CoP) by the Payment Systems Regulator, who are the regulator for the payment systems industry in the UK. If checking whether a name matched had always been a requirement under the PSRs there would not have been a need to introduce such a system. However, at the material time CoP was not in place and Moneycorp's systems like most other PSP's would've been set up to automatically credit payments received to the account with the corresponding unique identifier – checking the payee's name or any reference provided against the account holder name and or type of account would not have been part of the process. Nor was it, as I've explained above, a requirement under the relevant regulations, the PSRs.

So I can't fairly say that Moneycorp didn't act reasonably when crediting T's payment to the relevant account in line with the unique identifier provided. And I don't agree that this is something that Moneycorp was required to check or verify in these specific circumstances. This is likewise the case for any other payments received (during the time period relevant to this complaint) in the account which may have included information beyond the unique identifier.

I understand and accept T's point that Moneycorp had an obligation to conduct ongoing due diligence in relation to G's account. But firstly, I'm only able to consider a period of around six weeks, that being between 31 January and mid-March 2019 when the funds which T had sent to G in March 2019 had been transferred out of its account. As prior to that time I have no jurisdiction to comment on any alleged failure, and after that date it can't be said that any alleged failure would have impacted the loss T has suffered. And given the sophistication and scale of the scam here, which took place across Europe and over several years, I'm not persuaded that any reasonable level of scrutiny by Moneycorp of G's relationship with them would have revealed this in such a way that it would have prevented any of T's loss from the March 2019 funds.

Moneycorp has shared details of its policies with regard to its AML and know your customer (KYC) considerations. In essence it has explained that existing customer activities are monitored both in real time and subsequent to payments taking place. Considerations include but are not limited to adverse media information, erratic transaction volumes or amounts, and unusual or out of character requests from an account owner. Moneycorp have described the nature of G's business (obtained from the information taken when opening the account) and that at all times the account activity was in line with what was expected for an account and business of that nature.

It says, were there to have been any flags raised, this would have prompted a more detailed review. And this risk-based approach is compliant with the obligations upon them. They've also stated that in the time period relevant to this complaint, they had no reason to do more than the standard ongoing monitoring that did take place. I've no reason to doubt what Moneycorp have said in this regard. And I'm not persuaded that there is a basis upon which I think they ought to have done more within this time period that would have made a difference to the loss suffered by T.

T have suggested that Moneycorp ought to have done due diligence on other entities with whom G were linked. Whilst there will be occasions where Moneycorp should look beyond its own accountholder and into other linked entities, I don't agree this is the case in the circumstances here. I can understand why, in hindsight, T believe this to be the case. But there was no unusual, suspicious or uncharacteristic activity such that I think Moneycorp needed to do more. The accountholder was G, and that is who Moneycorp were required to 'know' and conduct ongoing due diligence on. In the circumstances of this complaint, I'm satisfied that during the six week period that I can consider under my jurisdiction there wasn't any reason for Moneycorp to conduct a detailed investigation of other entities that G may have been dealing with.

By the end of January 2019, the account in question had been in operation for some time. The statements from the previous year show that the activity on the account involved frequent significant credits to and debits from the account.

In this context and with this background, I can't say there is anything in the activity on the account that took place between 31 January 2019 and mid-March 2019 (when the last of T's funds were transferred from the account) which would have stood out as unusual, suspicious or potentially indicative of fraud. The account usage continued in the pattern which was already well established by the previous activity. So, I don't think Moneycorp did anything wrong in not intervening in the account (based on the activity) at that time. And it follows that I don't think the loss T suffered was preventable in this way.

Similarly, the evidence is clear that the funds were spent from the account, prior to Moneycorp receiving any notification that the payments had been made as the result of a scam. So nothing Moneycorp did when responding to this impacted upon what could be recovered.

I understand that this will come as a disappointment to T, but as I don't think (within the context of my jurisdiction to consider this complaint), that Moneycorp did anything that caused or contributed to T's loss, or hindered it's recovery, there isn't a reasonable basis upon which I can require them to do more."

T provided a response which I'll address below. Moneycorp didn't respond to my provisional 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.

Some of T's further submissions relate to our service's jurisdiction. Specifically that I have wrongly restricted my ability to consider the general conduct of G's account to the date when DISP 2.7.6R(2B) came into effect (31 January 2019). I've already issued a jurisdiction decision which was sent to T and so I don't have anything to add beyond what I've already said on this point which is that my jurisdiction only allows me to make a finding in relation to acts or omissions by Moneycorp which took place on or after 31 January 2019.

I can and have taken account of information prior to that date where necessary to make a finding on actions within my jurisdiction. An example of this being I've reviewed and considered the account activity prior to January 2019 to help me assess whether the activity after that date would have been unusual or suspicious such that Moneycorp ought to have intervened. So I don't agree I've unreasonably restricted myself or haven't fairly considered the wider circumstances. But the fact remains that I can only make a finding on an act or omission within my jurisdiction which here, is on or after 31 January 2019.
T also submitted a document that G sent to investors dated in September 2017. They say this shows that the relationship between G and Moneycorp had been ongoing for a number of years. The document indicates to investors that the account was some sort of escrow account. T say that in light of this sort of communication it is inconceivable that Moneycorp was unaware of the terms of the LNI. T believe that Moneycorp should be properly interrogated on their records going back well before 31 January 2019. The implication seems to be that if Moneycorp had previously been made aware of the terms of the LNI, that their failure to act would have been ongoing in time beyond 30 January 2019.

I've considered this and I understand the point T is making. But in the circumstances here, and for largely the same reasons as explained in my provisional decision, I'm still not persuaded that Moneycorp were aware of the terms of the LNI and there can't therefore have been a failure to act on that basis on or after 31 January 2019. Moneycorp have told our service that they had no knowledge of the terms of the LNI. And it is very difficult to provide evidence of a lack of knowledge of something. As I've mentioned previously, our service isn't required to forensically examine matters we're intended to be an informal alternative to the courts. So whilst I understand T thinks I should require Moneycorp to provide all correspondence between them and G for a number of years, I feel I have sufficient evidence to decide this point. I accept, on balance, Moneycorp's assertion that they had no knowledge of the terms of the LNI. I have no reason to doubt Moneycorp's testimony. It is for each party to provide the evidence to support their position. T have had this opportunity and haven't submitted anything that persuades me otherwise.

T have made a similar point about the requirements for ongoing due diligence. Specifically, T said: *"In summary, it is a mistake by the Ombudsman to consider evidence of lack of due diligence, AML etc as restricted by the 31st January 2019 when DISP 2.7.6R(2B) became effective. The act or omission referred to in the regulation refers to the payment and disbursement of the £40,000, a transaction in respect of which, FOS was granted jurisdiction on 31st January 2019. The terms ("act or omission") do not refer to a pre-existing, persistent and overriding general obligation on [MoneyCorp] in respect of AML and KYC etc. They simply make the transaction judiciable by the FOS from that point. The key point for the Ombudsman's consideration is that 31st January 2019 relates to jurisdiction not to evidence."*

I have nothing further to add on this point. In these circumstances, I remain satisfied that it is only acts or omissions by Moneycorp that took place on or after 31 January 2019 that can be complained about (within our jurisdiction).

T say that the crux of the matter lies in the knowledge of Moneycorp at the date they received the £40,000 in March 2019. To an extent I agree with this statement. If Moneycorp knew or reasonably ought to have known that those funds were paid into its account as the result of a fraud or scam, then I'd have expected them to have taken action. But I don't agree they reasonably could have known this at the time. T have questioned my conclusion that any reasonable level of scrutiny (by Moneycorp of their relationship with G) wouldn't have revealed the alleged scam such that it would have prevented T's loss.

T point out that:

- G failed to file accounts on time;
- There was a very complex structure with several changes of name between the parties involved in the scam;
- G had numerous and extensive changes of directors as late as 2018.

I've considered all of this. But I remain of the opinion that T's expectations of Moneycorp's monitoring of G are too high. I don't agree that they were required to conduct detailed investigations into or have oversight of the activity of G as a matter of course - in the way that T seems to expect.

T say that I haven't looked at the fees, charges and spreads on currency deals effected by G for Moneycorp. They believe these are likely to be unusually profitable which they say would be evidence that Moneycorp should have suspected all was not as it should be. I've reviewed G's account activity and maintain that (within the time period relevant to this complaint) there wasn't anything so unusual or indicative of potential fraud such that Moneycorp ought to have done more. And I consider the fees, charges and spreads to be a matter of commercial discretion for Moneycorp.

T have highlighted a FCA final notice in which another regulated business 'B' was fined. Part of the reasoning for this was the FCA said that business had failed to finalise reviews of its customer in a timely manner. T say I haven't identified Moneycorp as a high-risk entity. And they rely on the report from the FCA to support that B treated money service providers as high-risk clients. T have highlighted part of my provisional decision where I've referred to the ongoing due diligence by Moneycorp and say that this refers to standard due diligence, when it should have been 'enhanced due diligence' alleging I have used the wrong 'test' as well as erroneously restricting my consideration to 31 January 2019 until mid-March 2019.

I've considered this. And obviously Moneycorp's duties and obligations existed prior to 31 January 2019. But even if I were to accept that Moneycorp ought to have applied enhanced due diligence due to the nature of G's business, and that they didn't, this still wouldn't impact the outcome of this complaint. I don't think any reasonable level of diligence would have resulted in the conclusion that G were involved in a scam at that time or that this would have made a difference to T's loss. I'll expand on my reasoning for this below.

T have also referenced an expert report from an insolvency administrator and a dossier prepared by a group of those with losses relating to G. I've seen copies of both of these which I thank T for providing. T points out that G hadn't bought property in some time. And they say because Moneycorp knew G were a property investment firm, this is something that should have been challenged. Again I'm not persuaded Moneycorp should have done more in the time period relevant to this complaint. And even if they had, property can be a long term investment, and I'm not persuaded a period with no purchases would have resulted in the discovery of the alleged scam. And I also don't think Moneycorp would be required to involve itself in how another legal entity conducts its business. They aren't there to police the directors' commercial decision making, only to attempt to identify potential misappropriation of funds.

Summary

I understand T will be disappointed with my decision. But for me to fairly uphold this complaint, I'd need to be persuaded that there was a failure that took place between 31 January and mid-March 2019 and but for that failure, T's loss would have been prevented. It isn't enough just for there to have been a failure, I'd need to be able to conclude that the

failure fairly and reasonably caused the loss.

So even if I'm wrong with what I've set out above and I were to accept all T's submissions and to accept that there were multiple failures regarding their monitoring of the account and relationship with G (which for clarity I don't). I still don't think this would have made a material difference. Given the sophistication and complexity of what went on, I don't think Moneycorp reasonably could have concluded G were operating a scam in 2019. The recent reports that T have submitted include links to further reports from auditing professionals and even they struggle to ascertain exactly what has gone on (in part due to incomplete and insufficient records being available). So I find it implausible that any reasonable level of scrutiny that Moneycorp ought to have conducted would have impacted the loss T has suffered. Its most likely, had Moneycorp had concerns about the account, they would have exercised their commercial discretion and exited their relationship with G. But there is evidence (some of which is included in the reports that T have referenced) that G had banking relationships with numerous providers in various territories. So, had Moneycorp ended their relationship with G, it's likely G or those it was associated with would have continued their activity through one of their other multiple accounts and T wouldn't have ended up in a meaningfully different position. In essence I'm not persuaded that, even if they were accepted, the alleged failures can fairly and reasonably be said to have caused the loss to T.

Again, I'm sorry T has suffered the loss they have. But as I don't think this is something Moneycorp are responsible for, I'm not going to direct that they need to do anything further to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 15 December 2023.

Richard Annandale
Ombudsman