DRN-3983363

The complaint

Mrs W is represented. She says Hargreaves Lansdown Asset Management Limited ('HL') failed, in December 2021, to safeguard her assets, to warn her about fraud and to protect her accounts from the Authorised Push Payment ('APP') fraud that they were subjected to – causing a total financial loss of almost £380,000.

She held the following HL accounts – a Self-Invested Personal Pension ('SIPP'), a Fund and Share ('F&S') account, and a Stocks & Shares ('S&S') Individual Savings Account ('ISA').

HL says it greatly sympathises with Mrs W's situation and her financial loss, but it disputes the complaint and says it discharged its safeguarding and fraud prevention obligations in the matter.

What happened

One of our investigators looked into the complaint and agreed with HL. He too empathised with Mrs W's situation. However, he concluded that the complaint should not be upheld because, overall and in the circumstances as they were, HL was not in a position to do more than it did. His main findings can be summarised as follows:

- Mrs W was a victim of APP fraud that resulted from the fraudsters contacting her; gaining her confidence; coaching her on liquidating and making withdrawals from the HL accounts to her nominated bank account (for the HL accounts); and then coaching her on forwarding the withdrawals from the bank account to a crypto currency wallet. The money was lost thereafter. This happened between 2 and 23 December 2021.

- Her solicitors argue that HL failed to give her effective warnings about fraud during her liquidation and withdrawal activities; failed to detect, query and block the transactions; and failed to detect the suspicious activities in the accounts (including significantly increased account log-ins) which were outside the norm for Mrs W.

- 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, defined HL's role in the matter.

- It is noteworthy that 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.

- The withdrawals of the scale made by Mrs W were not uncommon, especially for someone at retirement age as she was/is. In addition, the withdrawals were made to

the nominated bank account (held with a regulated UK bank) for the HL accounts. Neither of these aspects would have raised suspicion.

- HL conducted a telephone risk questionnaire with her on 13 December, during the withdrawals; recording evidence shows that it made her aware of potential risks and tax implications in making the withdrawals; the telephone questionnaire did not refer to her taking financial advice for the withdrawals but HL did that separately in writing on the same date; during the questionnaire she confirmed that the withdrawals were for a property purchase, which was untrue and which was what the fraudsters had coached her to say; this would not have raised suspicions on HL's part, and it could have been viewed as behaving unreasonably if it reacted negatively; evidence of follow-up calls between the parties shows HL was given no cause to be suspicious.

- Mrs W's solicitors say HL should have been alerted by the unusually high number of account log-ins by her at the time. However, in the context of her liquidation of the accounts this would not have been unusual. They have also mentioned personal circumstances at the time that made her vulnerable, but HL was unaware of that at the relevant time so it could not reasonably have been expected to take extra precautions in that respect.

Mrs W's solicitors disagreed with this outcome. They said the investigator's view fails to take fully into account the sophisticated nature of the fraud she was subjected to; that HL ought reasonably to have queried and blocked what amounted to extremely irregular transactions (that is, complete liquidation of the HL accounts), regardless of the withdrawal destination being the nominated bank account; that she was led to believe the fraudsters were from the regulator and that her actions were protecting her assets; and that the withdrawals contrasted with her normal account use and profile.

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.

Like HL and the investigator before me, I empathise with Mrs W's situation, with the profoundly distressing experience she has endured and with the financial loss she has incurred.

However, my task is to determine whether (or not) there were failings within HL's role in the matter, which facilitated the fraud she was subjected to. As I explain below, I do not consider there were such failings, so unfortunately for Mrs W I do not uphold her complaint.

Before addressing the crux of the complaint, I have noted a part of the complaint submissions concerning HL's complaint *handling*. I will not be dealing with this because it is beyond my remit, as I explain next.

I can determine complaints about regulated activities, like the safeguarding activity in Mrs W's core complaint. On its own, complaint handling is not a regulated activity (and it is not an ancillary activity connected to the conduct of a regulated activity). In some cases, it might be that a complaint to a firm and its alleged mishandling of it forms a part of the substantive case. For example, where the alleged mishandling of a complaint is said to have added to the substantive problem or affected its mitigation. In those types of cases,

addressing the firm's complaint handling might be a necessary part of determining the overall complaint. Mrs W's complaint is not that type of case. The subject of her complaint (and the damage caused in it) happened and concluded before her complaint to HL, so her complaint is indeed isolated and its handling by HL is outside my remit.

There does not appear to be, and there should not be, any dispute over the regulatory obligations HL was expected to discharge during the events in this case. Those obligations are clear in the SYSC provisions and regulatory principles, as both HL and the investigator have quoted/referred to. Furthermore, in terms of fraud prevention and the avoidance of fraud facilitation, HL would have been aware of complementary information to firms from the regulator over time about responsibilities to do both. I do not consider it necessary to quote and list the relevant regulations, that has been done in previous correspondence. Their sum effect was to place upon HL the duty to safeguard Mrs W's assets, protect them from the risk of fraud and to inform her on how to do the same. Her solicitors have set out why they consider it failed to discharge this duty.

As such, the main issues to determine relate to what HL did; whether (or not) that discharged its regulatory obligations; whether (or not) it ought to have had cause for suspicion from the circumstances it was aware of; and whether (or not), it ought reasonably to have done more than it did.

HL's involvement in the matter began on 6 December 2021, when Mrs W used its online platform to liquidate assets in the ISA and in the F&S account.

However, events started before this. She has shared an account of what happened during the period in which she was approached and then coached by the fraudsters. This began on 2 December 2021, and she has explained how her confidence was manipulated by the fraudsters presenting themselves as fraud prevention officials (aligned with the regulator) who had noticed suspicious activity in her bank account and sought to help her protect her assets. She was led to believe that neither HL nor her bank could be trusted with her assets, leading to her being coached on liquidating her HL accounts, withdrawing the proceeds to her nominated bank account and then forwarding them to the crypto currency wallet.

I do not find it necessary to present details of the background beyond the summary above, because HL had/has nothing to do with that background – and the complaint is about HL. The above summary provides sufficient context. Furthermore, HL was uninformed and unaware of this background during the liquidation and withdrawal events that followed. This remained the case until Mrs W informed it about the fraud on 11 February 2022.

The liquidations on 6 December were successful, so HL essentially facilitated them. They were done by Mrs W, so they were liquidations conducted in execution only accounts by the account holder. No meaningful safeguarding/asset protection duties would have been triggered at that point. HL had no indication that access to her online accounts had been compromised (and such access had *not* been compromised), so it was entitled to expect that she had conducted the liquidations herself (as was the case). The 'liquidations' would not have raised any suspicion, they happen commonly in these types of accounts for different reasons. I also find no basis to say HL should have done more to query the *reason* for the liquidations. It neither advised nor managed the accounts, and Mrs W was free to deal in her investment assets as she wished.

On 7 December Mrs W used the HL online platform to liquidate assets in the SIPP. The same conclusions directly above apply to this event, for the same reasons.

On 8 and 9 December she withdrew the liquidation proceeds from the ISA and F&S account, totals of £90,000 and £66,000. The payments were made into her verified nominated bank

account. On 13 December she asked HL for an Uncrystallised Funds Pension Lump Sum ('UFPLS') application form in order to withdraw the liquidation proceeds from the SIPP. The first application she submitted was not received. The re-submitted application was received by HL on 17 December, and on 23 December it remitted the net SIPP liquidation proceeds (£221,012.89) to her nominated bank account – there was also a separate tax payment to HMRC. Unknown to HL, the fraud was subsequently completed by the forwarding of all the payments into a crypto currency wallet.

The withdrawals certainly prompted the need for more diligence from HL in terms of protecting Mrs W's assets, but this should be viewed in the circumstances as they were. They should also be balanced with the notion of Mrs W, as an account holder, being legitimately entitled to make withdrawals from her account without undue delay or interruption (or hindrance) from HL – especially as there were execution only accounts.

The destination for all the withdrawals was Mrs W's nominated bank account. Available evidence is that it had been verified by HL at the time and it had been nominated since around 2017. The withdrawals to this account would not have been suspicious.

HL's terms of service required it to apply additional checks for withdrawals over £99,999. Mrs W's ISA and F&S account withdrawals were done online and were for lower amounts. No additional checks applied to them. I repeat, the background events involving the fraudsters were unknown to HL. It was obliged to deliver a service in which account holders like Mrs W were given online access to their accounts, and were given the direct ability to deal and to withdraw funds. She made withdrawals on two days from these accounts. HL says repeated withdrawals below the £99,999 limit would have been flagged for further enquiries. I have considered if this should have applied to the withdrawals that were made.

On balance, I am not persuaded that should have happened. In hindsight, the withdrawals below the £99,999 limit one day after another could arguably be viewed as potentially designed to avoid triggering further enquiries. However, these were online automated withdrawals and I have not seen evidence of manual intervention. In other words, the withdrawals on both days fell short of the level at which HL would have looked into 'repeated' withdrawals below the limit. They were not repeated enough to prompt further enquiries. I am not persuaded that it did anything wrong in this respect. A level to prompt such further enquiries had to be set and, overall, I have not found reason to say that level should have been set at withdrawals repeated over, at least, 'two' consecutive days.

If Mrs W and her solicitors dispute my judgement call in the above finding, the following finding rests on facts that are beyond dispute.

For the withdrawal of the SIPP liquidation proceeds, there was manual intervention by HL and additional enquiries. Both of these happened over the telephone and in writing. They happened from 13 December onwards, so even if HL should have manually intervened on 8 and 9 December, and did not, it did so shortly (around four days) thereafter.

Both parties spoke on the telephone on 13 December and Mrs W explained that she wanted to withdraw the SIPP liquidation proceeds because she needed them urgently for a property purchase. This was what she had been coached, by the fraudsters, to say but HL was unaware of that, and there would have been nothing suspicious about a SIPP holder using such proceeds for something as relatively common as a property purchase.

Her explanation was given as part of the risk questionnaire HL applied during the call. She referred to the property purchase having been a longstanding purpose for the SIPP's value since it was set up – that her "… *original plan was to cash it in at a certain stage in order to buy property* …" and that "… *the moment has now arrived"*. From HL's standpoint, this would

have added to the reasonableness of her request. After addressing other matters, the HL official concluded the call by wishing Mrs W all the best with her property purchase, so it seems clear that HL took note of the reason it was given for the withdrawal and that it believed what it was told. It had no cause not to.

Evidence from the questionnaire and the call recording also shows that she was told how the withdrawal was an important step. She confirmed awareness of that and of the associated risks and implications (including tax implications, which also appears to have featured in the online withdrawal process for the ISA). HL verified she was happy with her decision and she confirmed so. HL also warned her about the risk of scams and she said she understood that.

Mrs W asked for the quickest available process, but there is nothing in the recording that exhibits concerning behaviour or that would have suggested any more than a customer wishing to avoid undue delays in a withdrawal. HL explained the need to go through the UFPLS application process and she accepted this. In her subsequent calls to HL, on 16 and 17 December she was also reminded that the process could take five to 10 days, and she accepted this too. Overall, I have found no basis on which HL ought reasonably to have detected anything suspicious during its interactions with her on 13, 16 and 17 December.

This finding extends to her solicitors' argument about her online log-in activities and her calls to HL. They say both were out of the norm for her. However, both stood in the context of the liquidations and withdrawals she was conducting at the time, so they were reasoned. It would not have been unusual for HL to see increased account activities and telephone calls associated with Mrs W executing and monitoring both pursuits, especially so after 13 December when HL was informed about the property purchase objective.

Also on 13 December, HL sent her an email setting out the steps she needed to take for the UFPLS application and the matters she should consider in doing so. The email said usage of her pension was an important consideration and that she should understand her options and take advice in this respect.

Relevant to the present complaint, the email 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 Mrs W was 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; of fraudsters telling them their assets are at risk and that they need to be moved into a safe place; and of 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 also had an attached guide which included notice about tax implications and warning about scams targeting people at retirement (and signs to look out for).

The facts show that HL did enough to raise enquiries and to give warnings that ought reasonably to have given Mrs W multiple opportunities to share what was happening in the background. The problem was that she did not share that information and, unfortunately for her, there was nothing in her approaches to and interactions with HL that could reasonably have triggered its suspicion. For the sake of clarity, this is not at all a criticism of Mrs W. She was subjected to a deplorable manipulation of her trust and confidence by the fraudsters, in which they abused and misused both. I appreciate that she sincerely believed them and believed she was safeguarding her assets through the withdrawals.

However, ultimately her complaint seeks to show that HL failed to protect her assets and

seeks to make HL responsible for her financial loss. On balance, grounds for finding that failure and 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 it ought reasonably to have done more than it did. It was mindful of its regulatory obligation to protect Mrs 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 in her case. Nothing arose during their application to give it cause to query the affair further or to block the withdrawals. Indeed, taking such actions without good reason to do so could have amounted to unreasonable conduct.

I have also considered the specific matter of vulnerability in Mrs W's case. The details are of a personal nature and they do not need to be presented in this decision. It is enough to note available evidence that HL was unaware and uninformed of it until March 2022, many months after the events of December 2021. Therefore, this element could not reasonably have been expected to influence its approach.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 1 November 2023.

Roy Kuku
Ombudsman