DRN-3952733

The complaint

Mrs W is represented by her solicitors. She refers to events in December 2021 and says FIL Investment Advisors (UK) Limited, operating as Fidelity International ('FI'), failed to safeguard her FI Individual Savings Account ('ISA') assets (cash and investments), to warn her about the risk of fraud and to protect the ISA from a sophisticated Authorised Push Payment ('APP') fraud that she was subjected to at the time. The fraud caused her a total loss of around £426,000 (around £53,000 in uninvested cash and around £373,000 from the proceeds of liquidated investments) and she seeks redress for it.

FI has repeatedly expressed its sympathy for and empathy with Mrs W's situation and her loss, but it disputes the complaint and says it discharged its safeguarding obligations in the matter.

What happened

Mrs W's solicitors helpfully provided backgrounds details, and a summary chronology, of the events (in 2021) leading to, and including, the APP fraud. Those details are the source of what I summarise below. She was a victim of this fraud, and incurred losses, in relation to her bank account, the FI ISA account and other investment related accounts that she held with Hargreaves Lansdown ('HL'). This decision is only about her ISA with FI, but the same background applies to all the defrauded accounts.

Between 2 and 5 December she was contacted repeatedly by the fraudsters, first impersonating her bank and then impersonating the regulator.

In broad terms, they all convinced her that they were legitimate officials (from where they claimed to be), that her bank account and other accounts connected to it had been compromised and were being subjected to fraud, that the matter was under the regulator's investigation, that she needed to keep this information to herself and could not inform the account providers (because their staff were involved in the fraud), and that she needed to follow their guidance on a series of steps she had to perform in order to cooperate with their investigation and to safeguard her assets.

On 5 December she received a letter purporting to be from the regulator – but was from the fraudsters – on what looked like the regulator's letterheaded paper, confirming the investigation she had been informed about and confirming the risks to her assets.

With regards to the present case, Mrs W was then coached into doing the following – withdrawing the cash holding from her FI account and into her bank account; liquidating the investments in her FI account; withdrawing the liquidation proceeds from the FI account and into her bank account; and then transferring the total funds (cash and liquidation proceeds) into a crypto currency wallet. The fraudsters assured her that the regulator would thereafter move the funds from the crypto currency wallet into a safe bank account in her name and that the funds would be returned to her (with 7.5% compensation for her trouble and for her cooperation with the investigation) once the investigation was concluded and resolved.

Mrs W did as she was coached. She was guided and instructed by the fraudsters on how to

accomplish every relevant step. Her solicitors have also noted that during these times, the fraudsters also convinced her with news about how ongoing fraudulent attempts to access her money had been detected and stopped, the aim being to impress upon her the need to continue her cooperation and safeguard her assets in the way they were telling her to.

On 8, 13, 14 and 15 December she made the withdrawals she was told to make – first the uninvested cash, then the liquidation proceeds (on the last three dates) – from her FI ISA to her bank account. The withdrawals were eventually moved into the crypto currency wallet, as the fraudsters instructed.

Part of the assurances Mrs W had received from them was that an outcome would be communicated, and the return of her funds will happen, by 7 February 2022. Nothing was heard and nothing happened on this date, or since. She has lost access to the money she paid into the crypto currency wallet, so she has lost that money. She complained to FI in March 2022, and her solicitors submitted a further complaint on her behalf in June 2022. Fidelity responded to the former in April 2022 and to the latter in August 2022, maintaining the same position (rejecting the complaint) in both responses.

Mrs W's solicitors mainly say:

- At no point during her activities in the FI ISA (that is, withdrawal of cash, liquidations of assets and withdrawals of liquidation proceeds) did FI query her decisions/actions or give her warnings about fraud, in general, or APP fraud in particular. In addition, no online warnings were given to her. These stand as significant safeguarding failures, especially given the sizes of the funds involved.

- At no point during the relevant events did FI note and react to what amounted to unusual activities – in terms of the actions taken and the frequency of Mrs W's online logins at the time – in the ISA.

- Given her profile, including her retired status, it is inexplicable why FI would not have proactively contacted Mrs W during those activities to verify that she understood the ramifications of her actions (including the financial implications of liquidating the ISA) and to put her on notice about fraud.

- FI should have detected, queried and blocked the fraudulent transactions carried out between 8 and 15 December 2021, but it failed to do any of that.

- Specific aspects of Mrs W's personal circumstances show that she should be considered as vulnerable.

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

He mainly found that – there was nothing in her online ISA transactions that would have prompted FI's suspicion; she logged into the online account herself and executed the transactions herself, so there was no issue about the ISA's online security being compromised; in the past she had conducted withdrawals as high as £10,000, and asset sales up to the value of £20,000; her previous sale proceeds had been remitted to the verified nominated bank account for the ISA, and the same account was used for all the withdrawals she made in December 2021 so there was nothing in that respect to alert FI to the chance of fraud; it would have assumed she made the withdrawals for personal reasons; and, given that she was under the fraudsters' instruction to conceal what was happening,

even if FI had intervened there is no guarantee Mrs W would have listened to its intervention.

Mrs W's solicitors disagree with this outcome. They mainly say that the investigator's view fails to properly take into account the effects of the sophisticated nature of the fraud Mrs W was subjected to, and the extent to which she was made to believe her cooperation was protecting her assets; that FI had a duty to query the irregular transactions regardless of the bank account being in her name; that her past transactions were/are not comparable to those in December 2021, so the latter should have stood out as unusual and suspicious; and that it is wrong to suggest Mrs W would not have listened to intervention from FI because that amounts to an unknowable and irrelevant assumption, and there is no evidence to support the conclusion that she would not have listened.

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 Mrs W's complaint.

It is important to note that I issued the decision in Mrs W's complaint about the losses she incurred as a result of the same fraud in her HL accounts ('*the HL case*'). That complaint was against HL and was therefore separate. However, as the facts and the chronology (and contents) of events in the present case show, the activities on the part of the fraudsters and on Mrs W's part in December 2021 happened in relation to her FI ISA *and* her HL accounts.

My knowledge of the HL case (including the evidence within it) has direct relevance to my approach, findings and conclusions in the present case (about FI). For this reason, I will be referring to the HL case in parts of my findings below.

The fact that Mrs W was, and remains, the victim of a sophisticated and deplorable APP fraud campaign is in no way disputed by anyone. FI readily acknowledges this, the investigator did the same and I have been mindful of this throughout my consideration of her case. I too express my sympathy for and empathy with Mrs W. I understand the emphasis that her solicitors have repeatedly 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. Mrs W realised she was a victim of the fraud on or around 7 February 2022, and only thereafter 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 her at the relevant times, that has no bearing on FI's position in the matter.

- Only Mrs W was exposed to the sophisticated nature of the fraud, FI was not. If her solicitors' argument is that 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 – which I address below. If their argument also seeks to establish that Mrs W bears no fault in the matter because she was unduly influenced by very sophisticated fraudsters, I agree. However, FI did not know that at the time, it did not know what was happening behind her actions, so the absence of fault on her part does not automatically mean fault rests with FI. FI's responsibility remains a separate consideration.

Reference to the regulatory framework for the safeguarding of Mrs W's assets featured more in the HL case. The regulatory standards set out in the Senior Management Arrangements, Systems and Controls ('SYSC') section of the regulator's Handbook were mentioned – which 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).

Like FI, HL also provided an execution only service for its accounts. Nevertheless, I found that the SYSC provisions created regulatory obligations that HL had to discharge. I make the same finding with regards to FI and its responsibility over the ISA. In addition to the regulatory provisions, It would have received additional information and guidance from the regulator concerning the need for it to proactively prevent fraud and avoid the facilitation of fraud within its operations.

As such, and as it accepts, FI was responsible for safeguarding Mrs W's assets and for protecting them from the risk of fraud. It does not appear to dispute the linked responsibility to give her information on how to do the same, especially in circumstances where the risk of fraud is increased (including events involving asset liquidations and withdrawals).

Its responsibilities applied in the context of its execution only service. It could not give Mrs W advice and it could not get involved in her 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 Mrs W did all these things online, so those safeguards were applied and it was alerted to nothing suspicious because they were all done by her and there was nothing suspicious about that. It also says that, up to the end of its involvement in the matter – which was when withdrawals were made from the ISA – all actions remained legitimate and the withdrawals were made to the verified nominated bank account that had been used for a long time.

FI concedes that it did nothing more to safeguard Mrs W's ISA beyond the automated safeguarding measures that were applied during her use of the ISA online. Therefore, the main questions to determine are:

- Should FI have done more to protect Mrs W's ISA in December 2021, and/or to inform her about how her actions at the time potentially exposed her to a higher risk of fraud?

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

With specific regard to the asset liquidations in the ISA, I do not consider that FI was obliged to intervene or to question Mrs W. She conducted the liquidations herself, having logged into the online ISA account. There was no indication to FI 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 an account holder in an execution only account. That would have been commonplace and would not have caused suspicion, even if it was the first time the ISA, as a whole, had been liquidated to cash. As far as it was concerned she could have done that for a variety of different reasons. I have not seen evidence that it should have enquired further into those reasons at this point, especially because the liquidation proceeds remained in the ISA, so they remained *safe*.

The same cannot be said about the events in which the liquidation proceeds and uninvested

cash were then taken out of the ISA. At these points, FI was responsible for applying additional safeguards, 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 facilitate 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/do apply additional safeguards for some withdrawals.

Mrs W's total withdrawals on 13 and 14 December 2021 were for notably substantial amounts (in terms of total withdrawals made within a 24 hours period). Whilst I appreciate that FI did not apply a withdrawal value threshold to trigger additional safeguarding, the information from FI does not explain why withdrawals like these did not prompt manual steps (on its part) outside of the automated process.

I have considered whether (or not), because of their sizes, the withdrawals on these dates should have prompted a form of manual intervention by FI. On a finely balanced basis, I find that in the circumstances of this case the withdrawals could have prompted such intervention, but I do not have enough grounds to say that they *should* have.

They were substantial *total* withdrawals made on each date, but that meant a number of smaller withdrawals were made to reach each substantial total. The automated process catered for them, and because value thresholds did not apply the process flagged neither the individual withdrawals nor the total withdrawals as causes for intervention. It is beyond my remit to dictate how FI should conduct its operations. However, I do note that 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 of fraud risks associated with their withdrawals. There is also an overall regulatory expectation of such measures. It would have been reasonable for FI to use the same method. Had it done that it is more likely (than not) that the successive and/or total withdrawals on 13 and 14 December 2021 would have been flagged for some form of additional attention. However, the fact remains that FI did not operate in this way, so its system did not give it cause to intervene.

Mrs 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 on the basis of her unusually increased logins at the time, the complete liquidation of her ISA and the substantial withdrawals from the ISA (which emptied it). They say all were suspicious in the circumstances of her case.

Even if I was persuaded to agree, and even if FI should have intervened for the above reasons, wider available evidence shows that it probably 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 and losses, thereby making it responsible for the latter. 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 and

her solicitors said his findings were baseless.

A credible basis for this finding exists in the HL case. In that case, there were verbal and written interventions by HL on 13 December 2021. During a telephone call with HL on this date Mrs W was put through a formal questionnaire about the substantial withdrawal she was making. The fraudsters had coached and prepared her for the possibility of this, so she followed their guidance and told HL that the withdrawal was needed for a property purchase. She disclosed nothing about the background events to HL.

On the same date HL also sent her written information that included notice about the risks of fraud that she should be aware of in the context of her withdrawal. Borrowing from evidence in the HL 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, of fraudsters telling the victim their assets are at risk, of fraudsters saying the assets need to be moved into a safe place, and of 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.

Mrs W had the aforementioned intervention and notices from HL on 13 December 2021, on the second day (out of four) of her withdrawals from the FI ISA into her nominated bank account. This was relatively early intervention, and it highlighted fraudulent methods that she was already experiencing from the fraudsters around the same time. Granted, it was somewhat *indirect* intervention by HL, and not by FI, but it was an intervention nevertheless. At this point, she had yet to complete the steps for moving the total funds into the crypto currency wallet that the fraudsters controlled, and at this point by acting on the warnings she received from HL she could, and probably would, have avoided most, if not all, of her FI ISA losses.

The above findings do not in any way amount to a criticism of Mrs W. I remain acutely aware that her trust and confidence had been severely manipulated, abused and misused by the fraudsters at the time, so she believed them and genuinely believed her actions were helping to safeguarding her assets. In the circumstances, without knowledge of the underlying fraud and without cause to suspect it, her actions were rationale and reasonable and they appear to have extended to her not taking notice of the warnings from HL. 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 HL at the relevant time and in a closely connected matter. The telephone call questioned Mrs W's reason for making withdrawals and she was so unduly influenced by the fraudsters that she responded with the answer they had coached her to give. On balance, I consider that the same outcome would have applied if FI questioned her at the time. The written notice and warnings by HL about APP fraud did not discourage her from following the fraudsters' instructions. On balance, I consider that if the same type of notice and warnings had been issued by FI they too would not have discouraged her from following the fraudsters' instructions.

Overall, on balance and on the above grounds, I do not find that any reasonable intervention by FI would have made a difference to the safety of Mrs W's position or the safety of her ISA at the time of the APP fraud. I have also considered the matters of vulnerability that have been cited in her case. They are of a personal nature and do not need to be set out in this

decision. FI was not aware of these matters at the time of the APP fraud, so I do not consider them to be factors that should have influenced 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 2 January 2024.

Roy Kuku
Ombudsman