ISLE OF MAN **OFFICE OF FAIR TRADING**

# Financial Services Ombudsman Scheme

**Summary of the determination dated 15 February 2022 in respect of a complaint made to the Scheme that a local Bank was negligent in allowing a payment to be made to a fraudster.**

## The Complaint

In 2019 the complainants were in consultation with a financial advisor who recommended they transfer their savings from their bank account into an investment portfolio with a third party investment company. Shortly after receiving this advice they received an email which appeared to have come from their advisor instructing them to transfer £75,000 to a client settlement account in the name of the fund manager. This was a different name to the fund manager previously discussed with their adviser.

The complainant telephoned their Bank and gave a payment instruction to transfer £75,000 to the account referenced in the email. Bank officers asked a number of security questions of the complainant and proceeded to release the payment as instructed. Once the recipient details had been set up on their account, additional payments were made to the same beneficiary without further checks.

Later the complainant discovered that the email had not originated from their financial adviser and their money had been lost to a fraudster. They claimed that the Bank should have taken more steps to prevent them falling victim to the fraud known as an Authorised Push Payment Scam ('APP'). Whilst the bank sympathised with the complainants they rejected the claim that they had acted negligently and declined to refund the payments made to the fraudster.

A complaint was then made to the Scheme. In total £339,500 was paid to the fraudsters but, in view of the maximum limit payable under the Scheme of £150,000, the complainants limited their claim to the first payment made by the Bank of £75,000.

## Investigation

The central point of the complaint was that the complainants felt that the questions they were asked by the bank's officers represented a 'tick box exercise' rather than a proactive approach to reducing risk. Recordings of the telephone conversations between the complainant and the bank were submitted which provided valuable evidence as to whether the bank had acted appropriately.

The bank's procedures required that its officers ask a number of questions designed to encourage their customers to consider if there is anything suspicious about a payment they are requesting. The Adjudicator commented that the purpose of the scripted questions would not be satisfied if the answers provided did not, where appropriate, prompt a meaningful, interactive dialogue between the bank and its customer. Merely asking the question, hearing the answer and moving onto the next question, without engaging with the answers given, is not enough to ensure compliance with the relevant regulatory guidance.

## Findings

After considering the recording of the telephone call the Adjudicator commented as follows:

1. When the complainant advised that the payment details had been received via an email, this should have prompted further questioning as to the source of the email and may have led to the complainant querying why the payee name differed from that of the fund manager.

2. When querying had the complainant contacted the payee separately to confirm the bank details the officer did not fully complete the question as scripted. The script required that the officer asked had the bank details been checked via a follow up telephone call to their financial adviser. Given that the complainant had already advised that the payment details had been received via an email, a further opportunity would have been afforded to ensure the payment was being transferred to the correct beneficiary account.

3. The complainant did elaborate that they had not met the agent which should have invited further questioning as to how they could have been sure that the information that was being provided by email, and by a party they had not met directly, was accurate.

4. The recording of the call included the conversation during the handover of the call from one bank officer to a second officer. During the handover the first officer noted a discrepancy in the beneficiary bank account which after a discussion between colleagues was not brought to the attention of the complainant. By these actions the bank omitted to draw a highly relevant risk to its customer's attention in circumstances where the bank was on notice of an elevated risk of fraud. Whilst the bank in its defence stated that the fundamental part of the beneficiary name matched the name given by the complainants it is clear that even a minor discrepancy in payment details could highlight a potential fraud.

5. The bank made representation that during the call the complainant stated that they were certain that the transaction was not a scam. However returning to the fact that the bank was aware of a discrepancy in the beneficiary account name and that the beneficiary account details had been provided by email they should have been aware of the inherent risks in such transactions.

6. The bank did not consider the complainants vulnerability when fulfilling its duty to exercise reasonable care and skill. As an organisation it knew these customers were elderly, lived in a remote area and were preoccupied with some family medical issues. That they were embarking on transfers of significant sums of money to a beneficiary account the bank knew had been provided by email and to which there was a discrepancy, meant that questioning of their customer was even more important.

## The Determination and Award

The complaint was upheld.

The Adjudicator found that the complainants had suffered a financial loss. That the matters complained about, including consciously failing to draw a material discrepancy in regards to the beneficiary account to the complainant's attention despite there being an elevated risk of fraud, amounted to a wrongful act or omission by the bank.

The financial loss specifically complained about was £75,000 although the overall loss amounted to £339,500. The Adjudicator noted that, by assisting in the recovery of £29,706.99 remaining in the beneficiary account, the bank mitigated what would have been a greater loss to the complainants. However there had not been submission by the bank that a pro rata reduction in the award should apply and based on what was recovered the Adjudicator did not find that such a reduction should apply.

In considering whether the complainants contributed to the loss by not informing the bank that the beneficiary account name differed from the name of the intended beneficiary the Adjudicator did find that the complainant did, albeit unwittingly, contribute to the loss of opportunity to prevent the fraud to take place. The Adjudicator found that this contributed to no more than 20% in terms of 'respective blameworthiness' but found that the bank was more blameworthy. This is due in particular to its awareness of APP fraud; to its awareness of an elevated risk of fraud in this case; and to the complainants corresponding unawareness of each. In view of this a deduction of 10% was made from the proposed award, namely £7,500.

In addition an award was made for distress & inconvenience in the sum of £1,000 and interest at 4% per annum, this being the prevailing High Court rate applied under section 41 of the High Court Act 1991, from the date of the payment, 20th October 2019 to the date of the determination, a total of £6,290.74.

The award therefore amounted to a total sum of £74,790.74