

The complaint

Mr M complains that Talbot and Muir Ltd (Talbot and Muir) failed to carry out sufficient checks before authorising a payment of £40,000 to leave a bank account connected to his self-invested personal pension (SIPP).

What happened

Mr M holds a Talbot and Muir SIPP (an elite retirement account) in relation to which he acts as trustee and joint signatory. The arrangement means that no money can be paid out of the account without Mr M countersigning the mandate to authorise payments.

One of the investments in Mr M's SIPP is a plan with a company I'll refer to as P, which he first established in early 2021. I understand that Talbot and Muir countersigned the application and dealt with P regarding the setting up of the plan.

Mr M also uses the services of a financial adviser who works for an entirely separate company.

In January 2023, Mr M spoke to his financial adviser about making a top up investment of £40,000 into his plan with P. His financial adviser asked P for an illustration relating to the proposed investment. P emailed the illustration directly to the financial adviser on 10 January 2023.

On 11 January 2023 Mr M emailed Talbot and Muir. He said he'd forwarded an email he'd received from his financial adviser with the forms needed to make the disinvestment from one account along with those needed to 'top up' the investment in the P plan. He asked Talbot and Muir to countersign the forms (on behalf of the other trustees) and then scan and return them to his financial adviser.

Talbot and Muir countersigned the relevant forms and returned scanned copies to Mr M's financial adviser, which were password protected. It said the password would be needed to open all future documents from Talbot and Muir to the financial adviser's email address. It also sent hard copies by recorded delivery post. The financial adviser confirmed he'd emailed the forms to P and the other company involved – which Mr M was disinvesting funds from – and had asked P to confirm its bank details for payment. The financial adviser said he'd share those with Talbot and Muir once received.

Mr M's financial adviser received a letter dated 16 January 2023 purporting to be from P. It was entitled "Investment Top up" It named Mr M and cited a plan number. It said that Mr M's contribution should be made by bank transfer using the account details specified on its letter.

The financial adviser emailed Talbot and Muir on 17 January 2023 and said he'd attached a letter from P, which included the bank details into which Mr M's investment needed to be made. He also confirmed that the disinvestment from Mr M's other account was due to be made that day.

Talbot and Muir prepared a bank authority using the account details supplied by Mr M's financial adviser. It emailed that document to Mr M (password protected) and asked him to

review and sign it in his capacity as trustee and co-signatory on the account, so that funds could be transferred to P. Mr M signed the document and returned it to Talbot and Muir.

On 20 January 2023, Talbot and Muir emailed Mr M's financial adviser to confirm it had received confirmation of the disinvestment and had submitted the authority to the relevant bank for processing, so that funds could be transferred to P.

Around the same time, Mr M's financial adviser confirmed to 'P' that payment had been sent for processing at the SIPP bank account and was to be made shortly.

On 23 January 2023, Mr M's financial adviser shared an email with Talbot and Muir that had purportedly been sent by P (it appears this may have come from a different email address to earlier emails). It said that, due to technical difficulties on 20 January 2023, some incoming payments were rejected and returned to the sender – they were expected to be returned to the originating account within 1-4 days. Remittance details were enclosed to allow the payment to be made again in due course.

Talbot and Muir told the financial adviser that the funds had already been transferred to the account details the financial adviser had previously provided.

On 26 January 2023 Talbot and Muir told the financial adviser that the funds still hadn't been returned to Mr M's SIPP account. It asked the financial adviser to contact P to find out what was going on. The financial adviser responded shortly after to say that P had since confirmed receipt of Mr M's funds and were in the process of investing them.

In response to contact from Mr M, Talbot and Muir told him on 31 January 2023 that, according to the financial adviser, P had received the funds.

However, on 10 February 2023, the financial adviser indicated to Talbot and Muir that his company's email account may have been hacked.

Talbot and Muir spoke to the financial adviser on 13 February 2023 regarding the alleged email hacking. It said it hadn't received any emails from the financial adviser over the previous few days. The financial adviser initially indicated the issue had been resolved.

However, a little later, he told Talbot and Muir that the investment intended for P had been made to a fraudulent account. Talbot and Muir said it would contact the bank to attempt to trace the payment. It also submitted a report to Action Fraud. The bank subsequently confirmed it wasn't able to recall the funds.

Mr M complained that Talbot and Muir failed to carry out sufficient checks before authorising a payment to be made from his account.

Talbot and Muir responded on 4 April 2023, but it didn't uphold Mr M's complaint. It said it was satisfied that its emails and IT system hadn't been compromised and that it hadn't responded to fraudulent emails. Rather, it said emails purporting to be from P were introduced into the financial adviser firm's system via a compromised account. It said that as communications between it and the financial adviser firm were sent via established and well known email addresses, it accepted the instruction from the financial adviser in good faith, as coming from a reliable source. In addition, it said the information was shared with Mr M, who raised no concerns and authorised it to proceed with the payment. It added that, as far as it was aware, the bank holding Mr M's SIPP account hadn't yet signed up for 'Confirmation of Payee' (a system designed to identify mismatches in account details when making payments) but was hoping to do so later that year. So, there was nothing to suggest an issue would have been identified in Mr M's particular case. It said that if Mr M had

evidence to the contrary, it was willing to make a complaint about the bank to the Financial Ombudsman Service, on behalf of the trustees.

Mr M didn't accept Talbot and Muir's response. He complained to the Financial Ombudsman Service that Talbot and Muir failed to carry out sufficient checks when giving an instruction to his bank.

One of our Investigators looked into things, but he didn't think the complaint should be upheld. He didn't believe there were additional steps that Talbot and Muir could reasonably have taken to ensure the payment was paid to the correct account. He noted that Talbot and Muir was given the bank details to which payment should be made by Mr M's financial adviser. He felt it was reasonable for it to accept those details in good faith as being from a trusted source - especially as it wouldn't have had access to any other direct information apart from what it was given by the financial adviser.

Mr M didn't agree and made further comments in response. He said he told Talbot and Muir to move £40,000 to P. Yet when given different bank details, they didn't do what they were told and made no checks of an unrecognised bank account on their system. Mr M maintains that Talbot and Muir had a responsibility to check the details it was given - particularly against the details it held from when the investment was made two years previously.

He asked an Ombudsman to consider the matter afresh. It's been passed to me to decide.

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.

I can entirely appreciate Mr M's strength of feeling concerning the events leading to this complaint.

In order for me to uphold this complaint and direct Talbot and Muir to reimburse Mr M, I'd need to be satisfied that it was responsible - fully or partly – for Mr M's loss because it had, by an act or omission, treated Mr M unfairly or unreasonably.

I've given the matter very careful consideration. But for the reasons I'll set out, I'm not persuaded that Talbot and Muir is responsible for the loss that Mr M suffered. I know that's likely to come as very disappointing news to Mr M. So, I hope the reasons I've given below help to explain how I've reached this decision.

There's no suggestion that Talbot and Muir's accounts and systems were compromised. And I've seen evidence to show that Talbot and Muir did take reasonable steps to safeguard Mr M's personal information – for example by password protecting documents – before sending them to Mr M and his financial adviser.

I'm also satisfied Mr M's 'top up' investment wasn't made to an incorrect account because of an error on Talbot and Muir's part when transposing the account details it was given by Mr M's financial adviser. Rather, both parties seem to accept that the incorrect account details were provided because Mr M's financial adviser's account was intercepted by a third party acting fraudulently.

The disagreement in this case hinges on the extent of the checks that Talbot and Muir carried out. Mr M thinks Talbot and Muir's actions should have gone further. And he seems to be suggesting that, had they done so, it might have prevented the fraud from happening.

He says that, at the very least, when authorising a payment of £40,000 to leave his bank account, it should have cross referenced with the account details it used when helping to set the investment up two years earlier. I've given very careful thought to Mr M's point – both in terms of whether that would have been a reasonable action for Talbot and Muir to take and, if it had taken that additional step, whether it would have made a difference.

Assuming Talbot and Muir still held account details relating to the original investment, I accept that *may* have enabled it to cross reference them to ensure they matched. However, in the event of a mismatch, I'm not persuaded that means Talbot and Muir ought definitely to have known that something untoward was going on, or that any additional steps it might have taken would have prevented the fraud from happening. I say that for a few different reasons.

First, it's entirely possible that account details may have changed in a two-year period. So, had Talbot and Muir cross referenced in the way that Mr M is suggesting, it might simply have concluded that the details it was given by Mr M's financial adviser (as a result of recent direct contact with P) were different for that reason. Also, as far as I'm aware, at that point at least, neither Mr M nor his financial adviser had any reason to believe the account details it was given were fraudulent. So, even if Talbot and Muir flagged a potential anomaly having cross referenced with details already held, it seems likely the financial adviser would have confirmed those were the details P had given to him. And I think Talbot and Muir would then have gone ahead with its authorisation. So, again, I'm not persuaded additional steps would definitely have made a difference.

However, the fact is that Talbot and Muir didn't take the additional steps that Mr M has suggested. And, as far as I'm aware it was under no obligation to do so. So, the question I have to consider is whether it was reasonable for it to accept, in good faith, the information it was given by Mr M's financial adviser. And on balance, I think it was.

Talbot and Muir and the company that Mr M's financial adviser worked for were clearly known to each other. And in the same way that Mr M expects Talbot and Muir to conduct its own checks, I think Mr M could reasonably hold the financial adviser firm to similar standards. Therefore, as Talbot and Muir had no direct contact with P concerning Mr M's 'top up' investment, on balance, I think it was reasonable for it to rely on the account details given by the financial adviser, which was a trusted source. I entirely acknowledge Mr M's distress on finding out that he'd been the victim of a carefully perpetrated and quite sophisticated fraud, which had initially caught out his financial adviser and persuaded him to pass on incorrect details. That fraud also caught out Mr M himself and Talbot and Muir. But I don't think this is something that Talbot and Muir can be held responsible for.

I've also thought about whether there were other points in the process at which Talbot and Muir ought to have realised that something untoward was going on and taken additional steps. But I'm not persuaded there were. When it authorised the payment, I don't think Talbot and Muir could have known that it would subsequently be sent to a third-party account. And I understand that there was no verification process (also known as 'Confirmation of Payee') in place which Talbot and Muir could have relied upon. That's because it didn't key in the detail to actually effect the transfer. Instead, it sent the authority to the relevant bank for payment, and it was the bank that then took the required steps to actively send the funds. So, again, I don't think there would have been any way of Talbot and Muir knowing, at the point it authorised the payment, or when payment was made by the bank, that it was to be made to a third party's account.

In summing up, I entirely empathise with the very difficult position that Mr M finds himself in. But after very careful consideration, I'm not persuaded that the loss he's suffered was caused by any action or inaction on Talbot and Muir's part which means it has dealt with him unfairly or unreasonably.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 September 2024.

Amanda Scott
Ombudsman