

The complaint

Mr C complains that J.P. Morgan Europe Limited trading as Chase hasn't refunded him the money he lost when he fell victim to a scam.

What happened

The details of this case have been clearly set out by our Investigator - when he wrote to Chase upholding Mr C's complaint. As such, the facts are well-known to both parties, so I don't need to repeat them at length here. In summary:

- In October 2022, Mr C was tricked into sending a scammer two Faster Payments transfers. The first was made at 7:15pm for the amount of £8,900 and the second around 64 minutes later for the sum of £550.
- Mr C made both payments in the belief that his Chase account was at risk and that he was acting to protect his money.
- This belief was based on telephone calls he'd received, both purporting to originate with other financial organisations that Mr C banked with. These calls utilised genuine numbers for these organisations (a scam technique known as number spoofing).
- The callers knew several details about Mr C, helping persuade him that the calls were genuinely from his bank and credit card provider. There were other features of the call that helped persuade him including, but not limited to, the scammer's knowledge of the messages displayed by the Chase banking app.
- After Mr C had made the payments, the caller asked him to provide account details for family members and friends. Mr C realised at this point the request wasn't genuine and that he'd been scammed.
- He notified Chase of what had happened, and it attempted to retrieve the funds. However, the majority of the funds had been removed from the recipient account and Chase was only able to recover the sum of £2,125.25.

Chase declined to refund Mr C the remaining sum. It said Mr C had authorised the payments and it had no reason not to have carried out his instructions.

Mr C brought his complaint to our service, unhappy with Chase's decision and the treatment he'd received. One of our Investigators looked into it and recommended Mr C's complaint should be upheld.

Our Investigator accepted that Chase had an obligation to make the payments requested. But he said that as a matter of good industry practice, Chase should have been alert for out of character or unusual transactions and other signs that might indicate a significant risk of financial harm to its customers. He thought that this applied here, and that Chase ought to have contacted Mr C to discuss the payment instructions prior to processing them. Had it done so, the scam would have been uncovered and Mr C would not have lost these funds.

As a result, the Investigator said Chase should now settle the complaint by reimbursing Mr C for the outstanding loss together with interest from the date of the transactions to the date of settlement. He said it needed to also rework Mr C's account to remove any charges or account interest he had incurred as a result of these payments leaving his account. And in light of the distress and inconvenience Mr C had suffered Chase should pay additional compensation.

The investigator's findings were sent to both parties on 27 April 2023 with a deadline for responding of 11 May 2023. Mr C responded to confirm his acceptance. While Chase has been in contact with the Investigator to confirm its receipt of his conclusions, as yet it has failed to respond substantively to the Investigator's view. This is despite the Investigator's deadline having expired some considerable time ago, and the Investigator efforts to obtain a response including resending his findings through an alternate channel of communication.

In the light of this significant delay, the matter has been escalated to me to make a final 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.

Having done so, I'm upholding it.

Our statutory rules provide – at DISP 3.5.8 to 3.5.15 of the *Financial Conduct Authority Handbook* – that we may give case-management directions and fix or extend deadlines; and that we may:

...reach a decision on the basis of what has been supplied and take account of the failure by a party to provide information requested;

And that...

If a respondent fails to comply with a time limit, the Ombudsman may: (1) proceed with consideration of the complaint; and (2) include provision for any material distress or material inconvenience caused by that failure in any award which he decides to make.

I've therefore concluded that, in the absence of a substantive response from Chase to the Investigator's initial assessment, it is fair and reasonable to proceed on the basis of the evidence we already have and to take account of Chase's failure to provide any substantive reply to the Investigator's opinion. I do not consider it would be fair here to allow Chase further time than it has already had in which to provide further evidence or arguments. It has already had ample time and opportunity to do so.

I've considered whether Chase ought to have intervened during the course of the payments that Mr C was sending. I think these payments were sufficiently unusual and out of character that as a matter of good industry practice Chase ought to have contacted Mr C to reassure itself he was not at risk of financial harm.

Had Chase done so, I am satisfied that the scam would have readily been uncovered – I find it would have been immediately apparent to Chase what was happening, given its knowledge of the prevalence of this type of scam. As such these two payments would not have been made, and Mr C would not now be without the money.

I don't consider Mr C should share any liability for the resultant loss through contributory

negligence. I am satisfied he was the innocent victim of a sophisticated deception designed to steal his money, and he was not responsible for what happened. Chase was the financial professional in this situation and aware of the specific risk of this type of scam. In contrast, Mr C was the layperson here. I have also taken into consideration that Mr C has evidenced what I consider to have been a relevant vulnerability at the time in question (which he has previously made Chase aware of and which I therefore do not need to detail here).

Although most of Mr C's distress and inconvenience resulted from the criminal acts of the fraudsters, I think Chase could have done more to protect him from the scam and the impact of this, given both good industry practice and its statutory duty to co-operate with our complaints process (*DISP Rule 1.4.4 of the Financial Conduct Authority Handbook*). In all the circumstances I consider £350 compensation for distress or inconvenience to be appropriate. I am aware that this is a higher figure than that previously awarded by the Investigator. But given where we are in the complaint journey, and the fact compensation for distress and inconvenience is a matter of discretion, I believe it should fairly be paid in this case.

And all considered, I am satisfied that it would be appropriate to require Chase to add interest to the full sum outstanding at the rate of 8% simple per year. While the Investigator suggested a slightly lower rate could be applied in respect of funds originating from Mr C's other account, I consider it fair and reasonable (again taking account of where we are in the complaint journey) to apply 8% simple per year to the whole sum, to reflect the fact he has been deprived of the use of all of those funds for the period of time he has.

Putting things right

For the reasons set out above, I consider the fair and reasonable outcome in all the circumstances of the case is that J.P. Morgan Europe Limited trading as Chase should:

- Refund Mr C the balance of the money he lost as a result of the scam, being the sum of £7,324.75. It should do so within 28 days of receiving notification of Mr C's acceptance of my final decision; plus,
- Pay Mr C interest at the simple rate of 8% per year on that amount (less any tax properly deductible) from the date of the payments to the date of settlement;
- Rework Mr C's account to remove any charges or interest he may have incurred as a result of these payments being made; and,
- Pay Mr C £350 compensation for distress or inconvenience – also within 28 days of receiving notification of their acceptance of my final decision, failing which interest will thereafter accrue at the same rate until payment.

My final decision

I uphold Mr C's complaint about J.P. Morgan Europe Limited trading as Chase.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 11 September 2023.

Stephen Dickie
Ombudsman