

## **The complaint**

Mr T has complained J.P. Morgan Europe Limited, trading as Chase, won't refund transactions he didn't authorise.

## **What happened**

In November 2022 after a night out with friends overseas, Mr T realised he'd been a victim of fraud. He'd woken up without his phone and wallet. His hotel told him the police had both, so he went to pick them up. He complained to Chase about a number of transactions which he believed he'd not made, as he felt he'd been drugged within the club the night before where these transactions took place.

Chase wouldn't refund him as they felt Mr T must have authorised the transactions himself. Their evidence showed the app had been accessed by Mr T's biometrics, in his case facial recognition.

Mr T brought his complaint to the ombudsman service. He was sure he'd not made these transactions. He was also able to confirm two other banks (who I'll call S and H) had either refunded him or blocked the original attempts to make the transactions.

Our investigator felt the evidence showed it was most likely Mr T hadn't made the transactions. The nature of these very much resembled fraud-type transactions. Chase didn't agree and provided additional evidence which they felt showed Mr T's evidence was contradictory.

Our investigator disagreed and confirmed Chase should refund Mr T in full along with 8% simple interest a year. Chase continued to dispute this outcome and have asked an ombudsman to consider Mr T's complaint.

## **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've reached the same outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The Payment Services Regulations primarily require banks to refund customers if they didn't make or authorise payments themselves. Certain other circumstances do apply – specifically whether the customer was grossly negligent in looking after their card and PIN – but nothing else that's had a marked impact on the decision I'm making here. So when we look at

whether a bank has acted fairly in rejecting someone's fraud complaint, one of the things we consider is whether the customer made the transactions themselves or allowed them to be made. If they did, then we generally wouldn't ask the bank to refund them.

To help me reach this decision, I've considered evidence provided to us by Chase and Mr T. I've also noted the details in our investigator's views of 26 May and 7 August 2023.

I think the following aspects are pertinent to this complaint:

- There's no dispute Mr T was in a bar at the time of these transactions. He'd gone there with friends to celebrate a forthcoming wedding. His friends left him there and Mr T woke up the following day in his hotel room without his phone and wallet. It seems feasible that Mr T was drugged.
- I don't doubt Mr T's story that he had to go to the local police and was able to regain his phone and wallet. When he did so, his cards were still in his wallet, but in a different order.
- The transactions in dispute are out of character for Mr T's normal use of his account. It's also the case that the nature of these transactions – and those made or attempted with his credit card with S and on his account with H – look very much like fraudulent transactions. S refunded Mr T whilst H blocked attempted transactions as they clearly looked like fraudulent transactions. Transfers into Mr T's Chase account enabled the very high-level payments to be made from his Chase account using Apple Pay.
- There were multiple logins using Mr T's phone during the time he's unable to recall what was going on. I agree the evidence shows biometrics were used but based on Mr T's testimony, I don't believe there's sufficient evidence to show Mr T consented to those transactions. Therefore they weren't authorised by him.
- Our service is aware that bars can be involved in downright fraud, over-charging, or misleading customers about what they were paying.

I have to say that I'm surprised Chase's systems didn't interrogate these transactions more carefully. These were very high-value and only enabled because of additional transfers which should have alerted Chase. However as I don't believe Mr T authorised these transactions, I don't need to make any other finding on what Chase should have done at the time.

I have considered whether Mr T was just in a bar and subsequently found himself to have spent too much on drinks or services. It's not Chase's role to stop someone's genuine entertainment spending. However I have no evidence this was the case here.

### **Putting things right**

As I believe Mr T didn't authorise these transactions, Chase will need to refund him in full. This totals £7,264.33. 8% simple interest will also need to be added from the date the transactions debited Mr T's account until the date of settlement.

### **My final decision**

For the reasons given, my final decision is to instruct J.P. Morgan Europe Limited, trading as Chase, to:

- Refund £7,264.33 to Mr T; and
- Add 8% simple interest to this amount from the date Mr T was debited until the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 18 October 2023.

Sandra Quinn  
**Ombudsman**