

The complaint

Ms M complains that J. P. Morgan Europe Limited trading as Chase didn't do enough to protect her from the financial harm caused by an investment scam, or to help her recover the money once she'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In November 2022, Ms M saw an advert online for a company which I'll refer to as "G" which was endorsed by a well-known celebrity. She completed a contact form and received an email with a security code before being contacted by someone I'll refer to as "the scammer" who advised her to invest in cryptocurrency.

The scammer said he'd been an investor for eight years and provided a copy of his passport to prove his identity. He said Ms M could begin with a small investment and the more she invested the more profit she would make. He explained he'd take a small percentage of her profits as commission in return for doing the trading on her behalf.

Ms M did some online research noting G's head office was based overseas and they were opening a branch in London in 2023. The scammer used AnyDesk to open a trading account, which she could access using a username and password. She made an initial investment of £200 from Bank R, and the scammer asked her to first purchase cryptocurrency through a cryptocurrency exchange company and then load it onto an online wallet.

Between 29 October 2022 and 12 December 2022, the scammer made one debit card payment and sixteen faster payments from her Chase account totalling £155,401. The initial payments were to Ms M's cryptocurrency account, but when payments bounced back on 9 November 2022 and 10 November 2022, the scammer advised her to make payments to Bank R instead. She realised she'd been scammed when the scammer told her she'd have to pay fees to access her profits, and any attempts to get her money back were unsuccessful.

She complained to Chase, and it said she could raise a scam claim in respect of the first three payments. It said Ms M had transferred funds to accounts she held with other banks and that she should complain to the recipient banks about those payments because the fraud happened from those accounts.

Ms M wasn't satisfied and so she complained to this service with the assistance of a representative. Her representative said there were red flags present including the fact she was making large payments to a new payee linked to cryptocurrency, there was a rapid depletion of funds, multiple unusually high payments, a sudden increase in spending, a sudden change to operation of the account.

They said Chase should have contacted Ms M and asked her why she was making the payments, how she found out about the company, whether she'd done any research, whether she'd checked the Financial Conduct Authority website, whether she'd been predicted unrealistic returns and whether she'd made any withdrawals, and as she hadn't been prompted to give false answers she'd have realised Ms M was likely falling victim to an elaborate investment scam.

They also said Chase should have asked Ms M why she was moving all her funds to another bank account, and had it done so it would have been apparent that she was moving her funds to Bank R to be able to invest.

Our investigator felt the complaint should be upheld. She noted that Chase had contacted Ms M when she made the initial payment to Bank R on 11 November 2022. On that occasion Ms M said she was transferring funds so she could invest into cryptocurrency and the payment was released. Our investigator thought Chase should have asked her if she had evidence that she was transferring the funds to a legitimate business and whether she'd done any research. She was satisfied Ms M was being honest about the reason for payment and she thought it was likely she would have disclosed how she'd learned about the investment and that she had an account manager who had told her to download AnyDesk. She thought that if Chase had urged her to hold off on making the payment and investigate further the scam could have been prevented.

Because of this she said that Chase should refund the money Ms M had lost from the fourth payment onwards. But she felt Ms M didn't carry out sufficient due diligence noting there was nothing available online which would have reassured her that G was a genuine company, so she thought she thought the settlement should be reduced by 50% for contributory negligence.

She further explained that Ms M had also raised a complaint against Bank R and that this complaint had been upheld on the same basis, so she thought she should receive 25% of her loss from each party.

Ms S was satisfied with the outcome, but Chase has asked for the complaint to be reviewed by an Ombudsman. It has argued that the payment for £2,000 was a transfer to Ms M's own account and as no scam had occurred from the Chase account, it has questioned why it is being held jointly liable with Bank R.

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 conclusion as our investigator. And for largely the same reasons.

Chargeback

I've thought about whether Chase could have done more to recover the debit card payment when she reported the scam to it. Chargeback is a voluntary scheme run by Visa whereby it will ultimately arbitrate on a dispute between the merchant and customer if it cannot be resolved between them after two 'presentments'. Such arbitration is subject to the rules of the scheme — so there are limited grounds on which a chargeback can succeed. Our role in such cases is not to second-guess Visa's arbitration decision or scheme rules, but to determine whether the regulated card issuer (i.e. Chase) acted fairly and reasonably when presenting (or choosing not to present) a chargeback on behalf of its cardholder (Ms M).

Ms M's own testimony supports that she used a cryptocurrency exchange to facilitate the transfer. It's only possible to make a chargeback claim to the merchant that received the disputed payments. It's most likely that the cryptocurrency exchanges would have been able to evidence they'd done what was asked of them. That is, in exchange for Ms M's payments, they converted and sent an amount of cryptocurrency to the wallet address provided. So, any chargeback was destined fail, therefore I'm satisfied that Chase's decision not to raise a chargeback request against the cryptocurrency exchange was fair.

I'm satisfied Ms M 'authorised' the payments for the purposes of the of the Payment Services Regulations 2017 ('the Regulations'), in force at the time. So, although she didn't intend the money to go to scammers, under the Regulations, and under the terms and conditions of her bank account, Ms M is presumed liable for the loss in the first instance.

There's no dispute that Ms M was being scammed, but although Ms M didn't intend her money to go to scammers, she did authorise the disputed payments. Chase is expected to process payments and withdrawals that a customer authorises it to make, but where the customer has been the victim of a scam, it may sometimes be fair and reasonable for the bank to reimburse them even though they authorised the payment.

Prevention

I've thought about whether Chase could have done more to prevent the scam from occurring altogether. Chase has argued that the fraud didn't occur from Ms M's Chase account, but Chase ought to fairly and reasonably be alert to fraud and scams and these payments were part of a wider scam, so I need to consider whether it ought to have intervened to warn Ms M when she tried to make the payments. If there are unusual or suspicious payments on an account, I'd expect Chase to intervene with a view to protecting Ms M from financial harm due to fraud.

I've considered the nature of the payments in the context of whether they were unusual or uncharacteristic of how Ms M normally ran her account. The first three payments were to two new payees, the first of which was a cryptocurrency exchange. But the payments were low value and there wasn't anything suspicious about the pattern of transactions, so I don't think Chase needed to intervene.

The next two payments were re-credited to Ms M's account and so I've gone on to consider what happened when she made payment the fourth payment which was a faster payment of £2,000 to her own account with Bank R on 11 November 2022. This payment was stopped for a security check and Ms M said she intended to send the funds to a cryptocurrency account. Chase concluded there were no red flags, and the payment was processed.

I've considered whether Chase did enough to protect Ms M on this occasion and I agree with our investigator that as it was on notice that she intended to use the funds to buy cryptocurrency, it ought to have asked some more probing questions about the payment. I would expect it to have asked whether there was a third party involved and if so, how she'd met them, whether she'd downloaded remote access software, whether she'd been promised unrealistic returns, whether she'd made any withdrawals, whether she'd been coached to lie, whether she'd done any due diligence and whether she'd been advised to make an onwards payment from the cryptocurrency exchange.

I haven't seen any evidence that she had been coached to lie and she was open about the fact that she intended to buy cryptocurrency when Chase asked her about the purpose of the payment. So, I'm satisfied she'd have disclosed that she was being advised by a third party who worked for a company which had been endorsed by a well-known celebrity, that she'd

been instructed to download AnyDesk and that she'd been told to make an onwards payment from the cryptocurrency exchange.

I'm satisfied this would have been enough information for Chase to have detected the scam and so I would expect it to have told her it was likely she was falling victim to a scam and to have given her a tailored cryptocurrency investment scam warning and advice on further due diligence.

I haven't seen any evidence that Ms M had ignored any previous warnings and I think it's likely that she'd have acted on some robust advice from Chase and a warning that there were red flags present indicating that she was the victim of a scam. So, I think it should refund the money she lost from payment four onwards.

Apportionment

As the parties are aware, Ms M has also complained about the actions of Bank R. Our service's ability to investigate complaints together and apportion the burden of redress between respondents is the subject of no specific rule and only limited guidance, which can be found in the FCA's Handbook at DISP 3.5.3G and DISP 3.6.3G, which say:

DISP 3.5.3G: "Where two or more complaints from one complainant relate to connected circumstances, the Ombudsman may investigate them together, but will issue separate provisional assessments and determinations in respect of each respondent."

DISP 3.6.3G: "Where a complainant makes complaints about more than one respondent in respect of connected circumstances, the Ombudsman may determine that the respondents must contribute towards the overall award in the proportion that the Ombudsman considers appropriate."

It's been found there were failings not only by Chase but also Bank R in what reasonably could've been expected of them. So, with respect of the sums with which both Chase and Bank R are being asked to refund, I think it's fair to ask it to pay half the loss it could've prevented.

Contributory negligence

There's a general principle that consumers must take responsibility for their decisions and conduct suitable due diligence, and in the circumstances, I don't think Ms M did enough to protect herself from financial harm.

In recent years instances of individuals making large amounts of money by trading in cryptocurrency have been highly publicised to the extent that I don't think it was unreasonable for her to have believed what she was told by the broker in terms of the returns she was told were possible.

She hadn't invested in cryptocurrency before and so this was an area with which she was unfamiliar. She wouldn't have known that celebrity endorsements and the use of AnyDesk are red flags or how to check the information she'd been given. This unfamiliarity was compounded by the sophisticated nature of the scam, the fact she trusted the broker and the fact she believed the trading platform was genuine.

However, Ms M had been scammed before and yet there's no evidence that she did sufficient due diligence before going ahead with the investment. I accept this was a sophisticated scam and that she'd been reassured by the fact the scammer had sent her a copy of his passport, but Ms M ought to have done more research before investing such

large amounts of money on the advice of someone she'd found online. Our investigator has pointed out that there was nothing which would have confirmed that G was a genuine company (for example on the FCA or Companies House websites) and I agree that an absence of anything to confirm G was a genuine investment company should have raised concerns. Consequently, I'm satisfied the settlement should be reduced by 50% for contributory negligence.

Compensation

The main cause for the upset was the scammer who persuaded Ms M to part with her funds and I haven't found any errors or delays to Chase's investigation, so I don't think she's entitled to any compensation.

Recovery

I don't think there was a realistic prospect of a successful recovery because Ms M paid an account in her own name and moved the funds onwards from there.

My final decision

My final decision is that J. P. Morgan Europe Limited trading as Chase should:

- Refund 25% of the sum which both J. P. Morgan Europe Limited trading as Chase and Bank R have been asked to refund.
- Refund 50% of the remainder of the settlement.
- pay 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

*If J. P. Morgan Europe Limited trading as Chase deducts tax in relation to the interest element of this award it should provide Ms M with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 15 October 2024.

Carolyn Bonnell
Ombudsman