

The complaint

Mr C complains that J.P. Morgan Europe Limited trading as Chase (Chase) is refusing to refund him the amount he lost as the result of a scam.

Mr C is being represented by a third party. To keep things simple, I will refer to Mr C throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr C found the investment company Bullexo (X) following an online search and decided to invest. Mr C decided to invest and was required by X to download the screen sharing application AnyDesk so it could help him with the process of investing and opening an account with a cryptocurrency exchange (Crypto.com).

On X's request Mr C also downloaded an application where he could see the trades linked to the investment. Mr C has told us X was very professional and persuasive throughout the scam and didn't give him any reason not to trust the investment was genuine.

However, when Mr C attempted to make a withdrawal from the investment, he was unable to and realised he had fallen victim to a scam.

The following payments were made from Mr C's account with Chase in relation to the scam:

Date	Payee	Payment Method	Amount
6 April 2023	Foris Dax (Crypto.com)	Transfer	£25,000.00
7 April 2023	Foris Dax (Crypto.com)	Transfer	£25,000.00
8 April 2023	Foris Dax (Crypto.com)	Transfer	£25,000.00
9 April 2023	Foris Dax (Crypto.com)	Transfer	£25,000.00
10 April 2023	Foris Dax (Crypto.com)	Transfer	£25,000.00
11 April 2023	Foris Dax (Crypto.com)	Transfer	£15,000.00

Our Investigator considered Mr C's complaint and thought it should be upheld in part. Chase disagreed, so this complaint has 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.

It has not been disputed that Mr C has fallen victim to a cruel scam. The evidence provided by both Mr C and Chase sets out what happened. What is in dispute is whether Chase should refund the money Mr C lost due to the scam.

Recovering the payments Mr C made

Mr C made payments into the scam via the method of transfer. When payments are made by transfer Chase has limited options available to it to recover the payments. Chase could ask the receiving payee for a refund of any funds that remained in the account, but Mr C made the payments to an account in his own name, so if any funds remained, he would already be in receipt of them.

With the above in mind, I don't think Chase had any reasonable recovery options available to it for the payments Mr C made.

Should Chase have reasonably prevented the payments Mr C made?

It has been accepted that Mr C authorised the payments that were made from his account with Chase, albeit on X's instruction. So, the starting point here is that Mr C is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Chase should have been aware of the scam and stepped into question Mr C about the payments he was making. And if it had questioned Mr C, would it have been able to prevent the scam taking place.

The payments Mr C made in relation to the scam were significant in value, so I'm not surprised that all the payments were stopped, and that Chase stepped in and questioned Mr C about them before they were processed. Six calls took place between Chase and Mr C, and Chase has provided a copy of these call recordings.

I have listened to each of the recordings provided by Chase. Each time Chase spoke to Mr C he confirmed it was him making the payment and that the purpose of the payment was to invest in cryptocurrency. Mr C also confirmed he was the only person with access to his crypto account. Mr C said he was making several payments as he had to transfer a total of £140,000.

Chase warned Mr C that scams were common in crypto investment and that investing in cryptocurrency was considered a high-risk investment. Mr C should be willing to lose his money. Chase also directed Mr C to the "take five" website, but didn't push Mr C to visit the site, instead it just processed each payment.

In one of the calls Chase even appeared to encourage Mr C to invest stating it sounds like a good type of investment so why not.

Mr C had told Chase he had recently started investing in cryptocurrency and had to transfer a total of £140,000 that he was investing. Considering the information Mr C provided to Chase and the knowledge I would expect Chase to have around cryptocurrency scams I would expect Chase to have probed Mr C further about what the investment involved.

Had Chase asked further scam related questions I think it would likely have found that Mr C was dealing with a third party, and he had to open a crypto account to invest. It would also have found that Mr C was required to download the screen sharing application AnyDesk which is a very common trait of scams of this nature.

Had Chase probed further as I think it should, I think it's likely Chase would have uncovered that a scam was taking place and have been able to prevent the scam taking place. So, Chase is responsible for Mr C's loss.

Did Mr C contribute to his loss?

Despite regulatory safeguards, there is a general principle that consumers must still take responsibility for their decisions (see s.1C(d) of our enabling statute, the Financial Services and Markets Act 2000).

In the circumstances, I do think it would be fair to reduce compensation on the basis that Mr C should share blame for what happened. Mr C had decided to invest a large sum of money with X so I think it would be reasonable to expect Mr C to carry out his own research before proceeding with any investment. A simple online search shows that a warning about X appeared on the FCA website before Mr C made the first payment into the scam. The warning stated X was operating without its authorisation, they should be avoided and that they are a potential scam.

I think had Mr C carried out some basic research into X first he would have realised X was not safe to invest with and would have been able to prevent his own loss.

I think it would be fair to reduce compensation by 50% on the basis that Mr C should share some blame for what happened.

Putting things right

To put things right J.P. Morgan Europe Limited trading as Chase should refund 50% of the payments Mr C made in relation to the scam. J.P. Morgan Europe Limited trading as Chase should also add 8% simple interest to the refund from the date the payments were made to the date of the refund (less any lawfully deductible tax)

My final decision

I uphold this complaint and require J.P. Morgan Europe Limited trading as Chase to put things right by doing what I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 15 March 2024.

Terry Woodham
Ombudsman