DRN-4582927

Complaint

Mr N is unhappy that J.P. Morgan Europe Limited trading as Chase ("Chase") didn't reimburse him after he fell victim to an investment scam.

Background

In November 2022, Mr N fell victim to an investment scam. He'd noticed a post on a social media website that advertised the services of an investment firm. He contacted the company and was put in touch with someone who claimed to be one of its employees. Unfortunately, Mr N wasn't in contact with a genuine investment business, but a fraudster.

He was told that, if he transferred his funds to that company, it would manage them on his behalf. I understand he wasn't promised a specific return but was told that his account would be handled by an experienced trader. He could, therefore, expect returns to be generous. The fraudsters paid some small returns to his account to persuade him the investment was genuine. Between November 2022 and May 2023, Mr N transferred a little under £18,000 in connection with the investment. The initial payments he made were fairly small, but they increased significantly over time. On 24 April 2023, he attempted to make his largest payment up until that point – a payment for £6,500.

This resulted in him having a conversation with an employee of the bank who attempted to warn him about fraud risk. He was asked some questions about the purpose of the payment. He confirmed that he was making an investment and that it was in cryptocurrency. He was asked to confirm that he had exclusive access to the destination account. The call handler then proceeded to read a short warning to Mr N, explaining that *"the cryptoassets marketplace is a target for fraud and scams and so you should be extremely cautious before investing … if you're offered high returns or something that sounds too good to be true or you are pressured, please be aware that you may lose your money … also, it is a very high risk and speculative investment so you need to be prepared to lose all your money if you invest in crypto assets … It is your responsibility to carry out due diligence on the person you're paying to make sure this is a genuine transaction.*

Once Mr N realised he'd fallen victim to a scam, he notified Chase. It looked into things but it only agreed to reimburse him partially. It said it would refund 50% of his losses prior to the 24 April 2023 payment. It didn't think it should be expected to pay him anything after that date because it warned him about scam risk during that phone call, but he went ahead and made payments anyway.

Mr N was unhappy with that response and so he referred his complaint to this service. It was looked at by an Investigator who upheld it in part. She said that Chase was expected to be on the lookout for payments where there was an increased risk of fraud. She thought that the payment of £6,500 was unusual and out of character. It was appropriate that Chase didn't process it until it had first spoken to Mr N. However, she wasn't convinced that it had handled that phone call particularly well and, as a result, there was a missed opportunity to prevent the subsequent losses to the scam. She concluded that Chase didn't need to refund any of the payments before that call, but should refund the ones after it. However, she said that it was fair and reasonable for Mr N to bear some responsibility for his own losses because he should’ve taken more care when investing. She recommended that Chase refund 50% of his losses from 24 April 2023 onwards.

Chase disagreed with the Investigator’s recommendation. It said that it had warned Mr N about the risks during that call and so it wasn’t reasonable for it to be asked to pay a refund now. As Chase disagreed with the Investigator’s view, the complaint has been passed to me to consider and come to a final decision.

Findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer’s account. However, that isn’t the end of the story. Good industry practice required that Chase be on the lookout for payments that were out of character or unusual to the extent that they might have indicated a fraud risk. On spotting such a payment, I’d expect it to intervene in a manner proportionate to the risk identified.

The Investigator concluded that Chase ought to have been sufficiently concerned to have intervened in connection with the £6,500 payment on 24 April 2023. I’d agree with that conclusion. In this instance, Chase did temporarily pause the payment until it had spoken to Mr J. However, I’d agree with the Investigator’s conclusions that this intervention wasn’t effective and so an opportunity was missed to prevent the subsequent losses to the scam. I’ve also taken into consideration that he was clear with the call handler that he was investing in cryptocurrency and that Chase ought to have been aware of the increasing prevalence of scams involving cryptocurrency at the time.

As I explained above, I’d have expected any intervention by Chase to be proportionate to the risk it ought to have identified. And in my view, the risk that he’d been targeted by a fraudster was sufficiently high that it needed to do more than provide him with a general warning. I think the call handler ought really to have asked Mr N one or two open-ended questions about how he became aware of this investment opportunity and his understanding of how it worked. If he’d answered those questions openly and honestly, I think Chase ought to have recognised that this investment opportunity had all the hallmarks of a scam – particularly the use of cryptocurrency, the fact that there was a “trader” working on the customer’s behalf and the way the investment had been promoted to the customer.

It's also worth noting that, at the time Mr N made this payment, there was a live warning on the website of the Financial Conduct Authority concerning the company he believed he was investing with. If Chase had warned him unambiguously about the fraud risk and recommended he consult the FCA website to protect himself, I think it’s extremely unlikely that he’d have proceeded with this payment or the subsequent ones.

I’ve also considered whether it’s fair and reasonable for Mr N to bear some responsibility for his own losses here. I’ve taken into account what the law says about contributory negligence but kept in mind that I must decide this complaint based on what I consider to be fair and reasonable in all the circumstances.

I think Mr N ought to have been more sceptical about an investment opportunity that was promoted to him via social media. It’s also noteworthy that he carried out online research regarding the company. But by the time he was making the payment on 24 April, there was a reasonable amount of information online that suggested the company might be a scam.

Overall, I think it's fair and reasonable for Chase to make a deduction of 50% from the compensation it pays Mr N.

Final decision

For the reasons I've explained above, I uphold this complaint in part.

If Mr N accepts my decision, J.P. Morgan Europe Limited trading as Chase should:

- Refund 50% of the payments made in connection with the scam from 24 April 2023 onwards.

- Add 8% simple interest per annum calculated to run from the date the payments were made until the date any settlement is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 25 April 2024.

James Kimmitt
Ombudsman