

Complaint

Mr J 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

The facts of this case are well known to the parties so I don't intend to set them out in full here. In summary, Mr J fell victim to an investment scam in June 2023. He saw an advert online offering the services of a broker. He made contact with this company and someone who purported to be one of its employers contacted him. Unfortunately, this person wasn't an employee of a genuine investment firm, but a fraudster.

I understand that Mr J was persuaded to download remote access software to his computer and the scammers talked him through the process of opening an account with Chase and making his investments through its online platform. I'm told the online platform looked professional and credible to Mr J and so he was persuaded that he was dealing with a genuine firm.

He made two payments in connection with the scam from his Chase account. The first was for £20 on 1 June 2023. He followed it up on the 30 June with a payment of £3,000. These payments were made to his own e-wallet with a third-party cryptocurrency platform. He then, under the direction of the scammer, converted those deposits into cryptocurrency and transferred them to blockchain address controlled by the fraudster.

The second payment resulted in a conversation between Mr J and the bank. I've transcribed an excerpt from the conversation below:

Chase: The reason why we are asking this is that we have seen a number of customers falling victim to scams when making similar payments ... We want to do everything we can to keep you and your money safe. To whom is this payment going?

Mr J: [cryptocurrency platform]

Chase: What is the purpose of this transfer?

Mr J: I'm doing.... erm trading

Chase: Is this for cryptocurrency?

Mr J: Yep.

Chase: Are you the one in control of the account?

Mr J: Yeah, I am.

Chase: Does anyone else have access to the account?

Mr J: No.

Chase: Have you spoken with a trusted family member or friend or seek independent advice other than from the one who introduced to you this investment?

Mr J: Yes.

Chase: Have you checked the FCA Register to make sure you're dealing with an authorised firm and checked the FCA warnings list of firms to avoid?

Mr J: I have, yes

Chase: Have you been doing this for a while now?

Mr J: I've been doing it for about a year now.

Chase: And have you seen any returns on your investment?

Mr J: Yeah, this is part of it

Chase: Alright, I understand.

Mr J complained that Chase hadn't done enough to protect him from the scam. It didn't agree to reimburse him. Mr J was unhappy with that and so he referred his complaint to this service. It was looked at by an Investigator. The Investigator thought that Chase hadn't handled that phone call as well as it should've done and so it missed the opportunity to prevent the scam. However, he also thought it was fair and reasonable for Mr J to bear some responsibility for his own losses by way of contributory negligence.

Mr J accepted the Investigator's view, but Chase didn't. Chase argued that, since Mr J had given misleading information when the payment was discussed with him, it doesn't think there's any reason to think he'd have answered any further questions openly and honestly. 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 Chase should've had such concerns when Mr J asked it to make the £3,000 payment and 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 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.

The employee of the bank adopted a checklist approach to the conversation. Mr J was asked a series of closed questions. I think the call handler ought really to have asked Mr J one or two open-ended questions about how he came to become aware of this apparent investment opportunity and 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 consumer was introduced to the investment.

I've considered the fact that Mr J gave some misleading answers to questions by the call handler. I think there was some reticence on his part to discuss what he was doing. I think the way Chase approached the call meant that he saw it as quite transactional and simply a barrier he had to overcome to proceed with the payment. I find it unlikely that he'd have been able to fabricate a convincing cover story if he'd been asked open questions during the call.

Mr J was asked whether he'd checked if the company he was investing with was authorised by the Financial Conduct Authority and he said that it was. I think Chase ought to have recognised that it was highly unlikely to be the case and so shouldn't have taken his answers at face value. The call handler also asked Mr J whether he'd earned any returns from his investment. He responded "*yes, this is part of it.*" That response was ambiguous and simply prompted a follow-up question. As I understand it, Mr J believed he'd earned returns on the investment platform but these hadn't been returned to his account.

I've also considered whether it's fair and reasonable for Mr J 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. Having done so, I think the promises the scammer made to Mr J about the returns he'd be likely to earn or the risk to his capital were simply too good to be true. I can also see from the messages exchanged that he started to have concerns about the investment around the time of the £3,000 payment and so I think he ought to have proceeded only with great caution. Overall, I think it's fair and reasonable for a 50% deduction to be applied to the compensation that is due to him.

Final decision

For the reasons I've set out above, I uphold this complaint in part. If Mr J accepts my decision, J.P. Morgan Europe Limited trading as Chase needs to pay him 50% of the second payment he made in connection with the scam. It should add 8% simple interest per annum to that sum calculated to run from the date the payment debited his account until the date a settlement is paid.

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

James Kimmitt
Ombudsman