

The complaint

Mr C is unhappy J.P. Morgan Europe Limited (trading as Chase) won't refund the money he lost to a scam.

What happened

In August 2023 Mr C fell victim to a cryptocurrency scam. He'd seen an advert for the investment online – and it appeared to be endorsed by two well-known public figures – so he submitted his details to show his interest. Mr C was contacted by a third-party who said they could carry out trades on his behalf – I'll call this third-party X. X encouraged Mr C to open an account with Chase, as well as accounts with a cryptocurrency exchange and with X directly, they also encouraged Mr C to download some remote access software.

Mr C made an initial small investment, and when he could see on X's platform that he was making profits, X told him about a new investment opportunity which would net him even more profit. Mr C did not have any money set aside for this new investment, and so X encouraged him to take out multiple loans to finance his investment, they told Mr C he would be able to repay these loans quickly with his profits. Over the course of around a month Mr C invested £45,500 in the scheme, via payments to genuine cryptocurrency providers (which I'll call C and P) and then on to X:

Date of payment	Payee	Amount
07/08/2023	C	£500
18/08/2023	P	£10,000
21/08/2023	P	£10,000
29/08/2023	P	£5,000
04/09/2023	P	£10,000
08/09/2023	P	£10,000

Chase held all but the first payment for further checks before processing them. It says it provided warnings when it spoke to Mr C over the phone. It said, despite the warnings, Mr C continued with the payments, so it isn't liable for his loss.

Our investigator upheld the complaint from the second transaction (for £10,000 on 18 August 2023) onwards. She felt that Chase could have done more in its interactions with Mr C to bring the scam to light and to protect him from financial harm. However, she felt it fair that Mr C should share in the responsibility for his losses – so she recommended Chase refund 50% of the transactions from 18 August 2023 onwards (inclusive) along with interest.

Mr C accepted the investigator's recommendations. Chase didn't agree. It didn't think it could have done more during the calls.

As the case could not be resolved informally, it's been passed to me for a decision.

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 broadly for the same reasons.

In deciding what's fair and reasonable, I'm required to take into account relevant law and regulations; regulatory rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the time.

In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the terms and conditions of the customer's account. And I have taken that into account when looking into what is fair and reasonable in this case. But a bank also has to be on the lookout for, and help to prevent payments, that could involve fraud or be the result of a scam.

It is not in dispute that Mr C authorised the scam payments. It is also not in dispute that Mr C was duped by the scammer into instructing the bank to transfer money to a cryptocurrency account and ultimately on from there into the scammer's account. The scammer deceived him into thinking he was making a legitimate cryptocurrency investment for further trading. As I understand it, payments to the cryptocurrency provider were used to purchase genuine cryptocurrency which was then placed with a cryptocurrency exchange in a wallet in Mr C's name and from there it was moved for further trading with X on a fake trading platform. So, although Mr C did not intend the money to go to the scammer, under the Payment Services Regulations 2017, he is presumed liable for the loss in the first instance.

I appreciate the loss did not occur directly from Mr C's Chase account. But, taking into account the law, regulatory rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider Chase should fairly and reasonably:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.
- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which banks are generally more familiar with than the average customer.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.
- Have been mindful of – among other things – common scam scenarios, the evolving fraud landscape (including for example the use of multi-stage fraud by scammers) and the different risks these can present to consumers, when deciding whether to intervene.

I don't consider that the fact a cryptocurrency exchange was used as an intermediary between Chase and X means that these responsibilities don't apply.

What can be considered unusual or uncharacteristic usually requires reference to common activity on an account, but the account had been opened purely to make the scam payments, so there was no account history against which Chase could compare any payments made. And I do think the first transaction was unremarkable, while it was evidently to a cryptocurrency provider it was nonetheless for a relatively small amount, so I wouldn't have expected Chase to intervene in this payment.

But by the second transaction, which was for £10,000 and was also to a known cryptocurrency provider, I think Chase ought to have been concerned. And evidently it was, as Chase made contact with Mr C to discuss this payment. Chase also discussed each of the following payments Mr C made to the scam. Accordingly, the question here is whether Chase went far enough in those conversations to protect Mr C from scams.

As a financial services professional, Chase would have been aware at the time that fraudsters often use genuine firms offering cryptocurrency as a way of defrauding customers and that these scams often involve money passing through more than one account. Scams involving cryptocurrency have increased over time. The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018 and figures published by the latter show that losses suffered to cryptocurrency scams have continued to increase since. They reached record levels in 2022.

It may have appeared at face value to have been a legitimate payment to a legitimate organisation. But even though the money appeared to be going somewhere safe or to Mr C's own wallet, I don't think the conversation should have stopped there. Based on the industry warnings at the time, I think Chase ought to have had a good enough understanding of how these scams work – including that consumers often move money to buy genuine cryptocurrency before moving it on again to a fraudster.

Listening to the call that took place on 18 August 2023, and all the calls that followed, Chase did ask Mr C questions about what he was doing, and it warned him that the crypto marketplace is a target for fraud and scams. It also asked if he'd done research and how he'd heard about the opportunity.

But I don't think the conversations went far enough. There were red flags that I think Chase could have picked up on and probed Mr C further on. Chase didn't probe into exactly who Mr C thought he was investing with, nor did it ask any searching questions about exactly how Mr C had found this opportunity – other than that he had found it on the internet. Further probing here would likely have revealed that he'd seen an advert on a social media site endorsed by a celebrity. And I think this would have given Chase cause for concern. I appreciate that at times Chase did warn Mr C to "be wary of adverts online" but there was no real explanation of what he should be looking out for. And while Chase did ask Mr C about his expected returns, Mr C didn't really answer this question, and Chase failed to probe him further on this.

I also don't consider that Chase did much to bring to life what a cryptocurrency scam could look like. Chase could have explained how scammers use genuine cryptocurrency to make payments to what appears to be genuine trading platforms but are fake and that scam 'trading' firms can manipulate software to distort prices and returns and trick people into buying non-existent currency. Chase could also have explained that often these scammers will encourage their victims to download remote access software, will coach them on what to say to their banks, or will encourage them to take out loans or borrow from friends and family to maximise their investment. All of these points are common features of cryptocurrency scams, and I think this would likely have resonated with the exact situation Mr C found himself in.

So, I think Chase missed an opportunity from the very first call with Mr C to engage with what he was telling it. In my view the signs were there, and Chase had the opportunity to fully expose the scam through better probing and by asking more open questions and highlighting some of the key features I've mentioned above.

I think this would have caused sufficient doubt in Mr C's mind not to proceed with the payments. The fraud would have failed, and Mr C would not have lost the £10,000 or the transactions that followed.

In addition to Chase's obligations, I've also thought about whether Mr C acted reasonably taking into account all the circumstances of the scam. So, I have also considered whether Mr C should share in the responsibility for his losses.

Mr C has said he carried out various checks to ensure that X was legitimate, but I cannot see that he would have found much at all at the time of the scam – aside from one negative review – which could have convinced him this was a legitimate investment opportunity. Particularly given that Mr C does not appear to have received any contract or other official paperwork regarding his supposed investments. And given the large amount that Mr C invested, I think it is reasonable to say he should have carried out further due diligence before making those payments. So I do consider it reasonable for Mr C to share responsibility for his loss with Chase.

It's for these same reasons that I don't consider that the term in Chase's terms and conditions which would entitle Mr C to a full refund of the scam payments applies in this case. That term states that Chase will refund scam payments unless it thinks a customer should have known they were being tricked. I consider it reasonable for Chase to rely on this exclusion in this case. But as detailed above, that does not mean that Chase bears no responsibility at all for Mr C's loss.

I've also thought about whether Chase could have done more to recover Mr C's funds once it was made aware of the scam, but I'm satisfied that there was nothing more Chase could have done here.

With all this in mind, I think it's reasonable for Mr C and Chase to equally share responsibility for Mr C's loss.

Putting things right

To resolve this complaint Chase should:

- Reimburse 50% of Mr C's loss from the £10,000 payment on 18 August 2023 onwards (inclusive)
- Pay interest on this amount calculated at 8% simple per year from the date the transactions were made to the date of settlement.

My final decision

My decision is that I uphold this complaint in part. JP Morgan Europe Limited (trading as Chase) should now put things right in the way I've set out above.

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

Sophie Mitchell
Ombudsman