DRN-5073958

The complaint

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

What happened

In January 2023, Mr M saw an advert for an investment company which I’ll refer to as “O”. The advert claimed that O used expert traders to train beginners on how to invest in cryptocurrency and was endorsed by a well-known celebrity.

Mr M searched online and found O on Companies House. He also noted there were no warnings or negative reviews. He completed an online enquiry form and was required a pay a registration fee of £200, which he paid from another of his accounts. He then received a welcome email from someone who I’ll refer to as “the scammer” who showed Mr M how to open an account on the platform.

Mr M watched as his deposit generated a profit, believing the rate of return seemed plausible. He was also able to make a withdrawal of £50, which further reassured him the investment was genuine.

The scammer suggested he should open an account with Chase explaining it was standard practice across the investment industry to dedicate an account specifically for associated fees and costs. He then asked him to first purchase cryptocurrency through a cryptocurrency exchange company and then load it onto an online wallet. Between 24 February 2023 and 14 April 2023, Mr M made 17 faster payments to a payments platform I’ll refer to as “S” totalling £56,383 (£23,999 wasn’t processed, leaving a total loss of £32,384).

Mr M monitored his investment on the trading platform. On 13 April 2023 he asked to make a withdrawal and was told he was liable to pay commission and tax, which he agreed to pay because he believed had no choice. Between 13 April 2023 and 14 April 2023, he processed five payments, but he realised he’d been scammed when he didn’t receive any funds, and eventually he lost contact with the scammer.

Mr M complained to Chase, but it refused to refund any of the money he’d lost on the basis that it had provided effective warnings and he didn’t do enough due diligence.

Mr M wasn’t satisfied and so he complained to this service. He explained he wasn’t an experienced investor and had believed the investment was genuine because he had access to a trading portal and had carried out his own research before sending any money.

He argued the pop-up messages he’d received weren’t effective because they didn’t mention scams. He was asked if he was sure he wanted to make the payments, which he was because he believed the investment was genuine, and he wouldn’t have gone through with the payments if he’d had any inclination that the investment was a scam.

Mr M's representative said Chase had failed to pick up on obvious fraud indicators and that it should have asked him probing questions, in response to which he'd have explained he was following the advice of a broker. With this information it would have been clear he was falling victim to an investment scam, and it should then have provided Mr M with an effective warning and scam education, which would have stopped the scam.

Chase explained it had declined Mr M's scam claim because he failed to undertake due diligence. It said it spoke to him on the phone several times when he was asked probing questions and warned that cryptocurrency scams are very common. He was told he might not be able to recover the funds if the investment turned out to be a scam and he confirmed he was happy for the payments to be processed.

Our investigator thought the complaint should be upheld. He accepted Chase had intervened on several occasions, but he felt it ought to have probed further and provided a more tailored warning. And had it done so, he believed Mr M wouldn't have made any further payments to the scam. He explained that Chase had contacted Mr M before the first five payments and he was satisfied he didn't say anything during the calls which would have indicated he was at risk of financial harm, so there was nothing it could reasonably have done to stop the scam.

However, our investigator felt the payments Mr M made on 4 April 2023 were more concerning and as Chase had almost four months of account history, it should've seen the payments were increasing in value. He thought it ought to have asked more probing questions including how he found the investment, whether he'd been told to download remote access software, if he'd made any withdrawals, whether he'd been promised an unrealistic rate of return, whether there was a third party involved, whether he'd done any research and whether he'd been given any documents to prove the investment was genuine.

Had it done so, he was satisfied Mr M would've described the circumstances of the investment including the fact he was being advised by a broker who had told him to use remote access software, he was seeing a high return, the advert had featured a celebrity endorsement, he hadn't received any official paperwork and he was being encouraged to pay increasingly larger sums based on "special events".

With this information he felt Chase should have identified that Mr M was being scammed and either not allowed the payment to go through or provided a more tailored warning and advice on additional due diligence. And he thought Mr M would've followed Chase's advice and further losses would've been prevented. So, he thought it should refund the money he'd lost from the second payment on 4 April 2023.

However, he thought the settlement should be reduced by 50% for contributory negligence because he didn't think Mr M had taken reasonable care. He explained none of the names of the individuals he dealt with were linked to the company on Companies House, he invested large sums in a short space without seeking independent advice, he learned about the investment on social media, he wasn't given any contracts, agreements or certificates, and the paperwork he did receive appeared unprofessional and crude.

Chase asked for the complaint to be reviewed by an Ombudsman.

My provisional findings

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

There's no dispute that this was a scam, but although Mr M didn't intend his money to go to scammers, he 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.

Chase's T&Cs state "if, taking everything into account when the payment was made, we find you should've known you were being tricked into sending money to a fraudster you won't get a refund". So, I considered whether Mr M should have known he was being tricked when he made the payments.

Mr M had explained that he wasn't an experienced investor, and I hadn't seen any evidence to contradict that. So, he wouldn't have known a celebrity endorsement and small withdrawals are red flags for fraud. He also did what he thought was reasonable due diligence and so I didn't think it was unreasonable that he didn't know to check the FCA website, that he was reassured by the fact he'd found O on Companies House and that there didn't seem to be any warnings or negative reviews online. I also accepted that he'd gone ahead with the payments because he'd genuinely believed the investment was legitimate.

However, based on the calls Mr M had with Chase, it was clear he'd been coached to lie by the scammer and that he did this repeatedly. He had explained he didn't know he was being scammed and simply said what the scammer told him to say, but I thought he ought reasonably to have questioned why he was being asked to mislead his bank by a representative of a legitimate financial business. Similarly, it seemed from his comments during one of the calls that he'd been advised by the scammer to open the Chase account because he was unable to make the payments from his other account. Again, I thought he ought reasonably to have questioned what he was being asked to do this.

I considered the circumstances that had persuaded Mr M that the investment was genuine in the context of the fact he'd been instructed by the scammer to mislead Chase and to open another account because he'd been prevented from making payments from his other account, and I was satisfied he should have known he was being tricked by a fraudster. Because of this, I didn't think Chase needed to refund the money he lost under the terms and conditions of the account.

Prevention

I also thought about whether Chase could have done more to prevent the scam from occurring altogether. Buying cryptocurrency is a legitimate activity and from the evidence I'd seen, the payments were made to a genuine cryptocurrency exchange company. However, 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 did enough when he tried to make the payments.

Chase intervened several times and I listened to the calls that took place on those occasions. During the calls, Mr M was asked what the payments were for, whether he'd spoken to or was under pressure from a third party and whether anyone else had access to his cryptocurrency account. Mr M said he was moving money between his own accounts for an investment, which he accepted was cryptocurrency when pressed. He said he'd learned about S through his own research, he was managing it himself and he hadn't spoken to anybody else about it. He said it was for his own benefit and he knew what he was doing.

During several of the calls, Mr M was warned that cryptocurrency is high risk, and he wouldn't get his money back if the investment turned out to be a scam. He was also asked if he wanted to put the payments on hold while he made further checks, which he declined.

I was satisfied that Chase was prevented from detecting the scam because Mr M didn't disclose the existence of the scammer or how came across the investment, and that there wasn't anything else it could reasonably have done to obtain the information it would have needed to detect the scam.

I noted that our investigator had recommended the complaint should be upheld because he felt that by the time Mr M made the second payment on 4 April 2023, Chase ought to have been more concerned to the extent that it should have asked more probing questions. But, based on the answers to the questions Mr M was asked when Chase did intervene, even if he'd been questioned most robustly, I didn't think he'd have provided any more information. M had accepted he was coached to lie and explained that he did so because he thought the investment was genuine and, in those circumstances, I didn't think more probing questions would have made any difference.

Our investigator also felt Chase should have given a better warning, but I was satisfied he was warned about cryptocurrency scams, and in the absence of more information about the circumstances of the investment, I thought the warning was proportionate and I didn't think it needed to do anything else.

Compensation

I said Mr M wasn't entitled to any compensation.

Recovery

Mr M had described that he paid an account in his own name and from there the funds were moved to an online wallet in the scammer's control, so I was satisfied there was no prospect of a successful recovery.

Developments

Mr M's representative has indicated that they don't accept my provisional findings. They have argued that Chase didn't do enough given the payment frequency and values and the answers Mr M gave to the questions it did ask ought to have raised concerns.

The representative has argued that Chase knows consumers are often coached on what to say by scammers, and had it probed further it would have been able to assess the risk and prevent the scam. They've further argued that Chase took Mr M's word at face value and if it had probed further, it would have been apparent that something untoward was happening and it could have refused to make the payments.

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.

I've reviewed the additional comments made by Mr M's representative, but I'm afraid the findings in my final decision will remain the same.

I accept Chase ought to be aware that scammer's coach victims to lie to their banks and that it should act accordingly where it suspects a consumer is giving false answers. But I'm satisfied Chase was prevented from detecting the scam because Mr M didn't disclose the existence of the scammer or how came across the investment, and I don't think it had any reason not to take his answers at face value. Further, I don't think Mr M would have provided any more information in response to more probing questions and I remain satisfied there wasn't anything else Chase could reasonably have done to detect the scam.

Overall, I remain satisfied that Chase took the correct steps prior to the funds being released – as well as the steps it took after being notified of the potential fraud. I'm sorry to hear Mr M has lost money and the effect this has had on him. But for the reasons I've explained, I don't think Chase is to blame for this and so I can't fairly tell it to do anything further to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 7 November 2024.

Carolyn Bonnell
Ombudsman