

## **The complaint**

Mr L complains that J.P. Morgan Europe Limited trading as Chase (“Chase”) failed to refund transactions he didn’t recognise.

## **What happened**

Mr L believes he was given something that affected his behaviour (without his knowledge) during a night out and was then coerced into providing his phone and security details to persons unknown to him, including use of his card for cash withdrawals. He’s said he was forced to provide his biometric (fingerprint) to enable multiple transactions to various accounts, including transfers to another one of his own accounts (which has been the subject of a separate complaint) and to new payees. Mr L advised his memory is hazy from the experience and he was in their company for about 12 hours or so.

Mr L later reported that he had bad bruising on his arms from the experience and was in shock for some time afterwards and had to seek continuing medical assistance. Mr L told Chase that he’d been coached by these persons when he was speaking to his other bank (due to their concerns about some of the payments being made on that account) and was made to have the phone on speaker to enable them to listen and give direction. He said he was threatened, and they knew his address because they’d photographed his driving licence to put more pressure on him. The matter was reported to the police.

When Mr L contacted Chase about the transactions, they had several calls with him, eventually declining to make any refunds because he’d authorised the payments himself and they believed he was grossly negligent when he allowed his security information to be obtained by unauthorised third parties after giving his phone to someone in a bar.

Mr L was unhappy with the way Chase handled his issue and made a complaint including an issue with how Chase communicated with him.

Chase again looked at the situation but didn’t change their position. Mr L then brought his complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the matter and asked both parties for information about the complaint.

Mr L was able to confirm his experience and continued to assert that he was the victim of a crime and was coerced into providing his security details so they could be used to take his money.

Chase provided details about the payments made from the account, showing that they’d been authorised mainly by Mr L’s own biometrics.

After reviewing the complaint, the investigator believed that Chase should have intervened at some point in the series of transactions leaving Mr L’s account. It was recognised that as many of them were sent to one of his own accounts (to be later used by the unauthorised third parties), it would be difficult for Chase to identify that anything was wrong. But, the investigator said that once new payees were set up, Chase should have realised there was a

problem and intervened.

It was recommended that Chase refund some of those transactions back to Mr L – totalling £10,400 to include simple interest at 8%. I noted the statements and Chase's figures are slightly different – so it's difficult to work out the final figure based on whether the first payment was £1,300 or £1350, which would make the final figure £10,450.

Mr L accepted the investigator's recommendations, but Chase disagreed and argued that because Mr L had said he'd been coached, even if they'd intervened it wouldn't have made a difference.

Chase asked for some more time to respond, but after several months haven't provided any further comments or information.

As part of my own investigation, I wanted to ask Mr L for some further information about that night. I was interested to understand some more detail about his interactions with the persons he said took his funds.

Mr L had provided a statement to the police concerning his recollection, including a memory of being with two women at some point.

Mr L was able to say that:

- He continues to suffer distress from what happened.
- He was with friends at a club until early in the morning and at some point, his friends left. He doesn't remember much about how he became involved with these people and remains of the opinion that he was drugged.
- He no longer has a memory of what happened, apart from being continuously drugged, threatened and manipulated into compliance, including physical restraint.
- He emphasized that he was not in control of the situation.
- He feels that a suggestion that he was voluntarily engaged with some of these people is profoundly unfair and fails to consider the coercion he was under.
- Chase were more fixated on fixing a minor issue with their app rather than dealing with the substantive complaint point.

I wrote to Chase to explain my thoughts on Contributory Negligence and offered them an opportunity to comment. To date, I haven't seen any response from them.

### **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 read the explanation about the events, I was sorry to hear about Mr L's experience and I can understand why Mr L's health was negatively impacted by it. It was no doubt a harrowing experience to be treated in such a way by these people.

Chase have argued that Mr L authorised the payments, was grossly negligent by allowing his security details to be obtained by unknown third parties and even if they'd intervened, it wouldn't have made any difference because he was being coached.

In broad terms, the starting position is that a firm is expected to process payments and withdrawals that its customer authorises, in accordance with the Payment Services Regulations (2017) and the terms and conditions of the customer's account. And in this case it's not in question whether Mr L authorised these payments from leaving his account.

It's recognised by all parties that Mr L enabled the payments (accepting that Mr L has argued he was coerced), providing Chase with the necessary instructions to make the payments. But that doesn't always mean that the business should follow every instruction without asking further questions or intervening to ensure requests coming from their customers are firstly genuine, and secondly won't result in harm.

I agree with the investigator's conclusions that inter-account transfers are more likely to go under Chase's radar, including the cash withdrawals. But, when taking the picture as a whole, there were some unusual account movements over the 12-hour period that I think should have given Chase reason to intervene. I haven't listed all the payments as they were detailed by the investigator, as both parties are already familiar with the activity on the account that day.

The relevant transactions that I think Chase should have been concerned about start when a new payee was set up and an initial payment is sent out for around £1,300 (or £1,350). That in itself isn't particularly suspicious – but the second such payment within a few minutes is indicative of activity I think Chase should have been concerned about. If they'd looked at the account movements, they would have noticed a lot of activity that was untypical on the account, which I think should have given them pause.

At this point, I think they should have taken steps to contact Mr L and discuss what was happening with his account. They've argued that it wouldn't have made any difference because he was being coached. I can't be sure what would have happened because Chase didn't intervene at any point, but the evidence I do have is from Mr L himself and his experience with his other bank. It's apparent from that evidence that there were a number of factors that would likely have given Chase notice that there were some unusual activities happening at the time, including other people being present on the call (which appeared to be on speaker) and Mr L's own behaviour. He later said that he hoped the operator (for the other bank) would have picked up on the various unusual elements of the call. So, on balance, I think Chase should have intervened and it's more likely than not that they would have obtained sufficient information about the call to be concerned and put in place processes to prevent further loss to Mr L's account.

Because I consider that these payments were authorised, the issue of gross negligence is no longer relevant, so I won't be considering this matter further.

*Should Mr L be held responsible for part of the losses that Chase are required to refund?*

The general rule here is that if a person has acted with a lack of care that's beyond what we'd expect from a "reasonable person" (an objective test), then they may be responsible for part of their losses (in respect of the refund).

Mr L has consistently stated he was drugged and forced (physically coerced) by these individuals and he had no say in what happened whilst in their company. From Mr L's testimony, he thinks he was given something in the club without his knowledge and after that wasn't under control of what happened. Mr L hasn't provided any proof of his exposure to any drugs (because he didn't seek immediate medical attention), so I've relied on his testimony here. It's clear that following the incident, his calls to Chase indicate he was badly affected by his experience and required assistance by his partner to continue to deal with them. So, I don't doubt what he's said about his experience.

I have thought whether Mr L's own choices led him into this situation (and should therefore be responsible for some of his own losses). But, after considering all that happened and Mr L's consistent testimony, I don't think it would be fair or reasonable for him to be held responsible for any of his losses given he appears to have been kept under control by these people. I don't think there's evidence to show he acted outside of what would be expected of a reasonable person in these particular circumstances.

So, on balance and after an objective review of the evidence, I think it's both fair and reasonable for Chase to refund Mr L after they failed to intervene when the evidence points to suspicious and unusual activity happening on the account. I think they should have taken action once the second payment to the new payee was initiated and put measures in place to prevent further losses. So, Chase will be required to refund those transactions after the first disputed transaction to the new payee was made. Interest at 8% (simple) per annum to be included.

### **My final decision**

My final decision is that I uphold this complaint and J.P. Morgan Europe Limited trading as Chase are now required to:

- Refund Mr L the disputed payments, starting from the payment made at 11.23 am on 29 March 2023, to include all the other disputed faster payments made that day. I can't reliably determine what the total is based on the current evidence provided by Chase, so they're required to confirm the amounts they debited. Chase's notes and statements differ by £50 for the faster payments to NC.
- The above amount to include simple interest at 8% per annum for the loss of the use of these funds to be calculated from the date of loss to the date of repayment.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 28 November 2024.

David Perry  
**Ombudsman**