

The complaint

Mr P complains about J.P. Morgan Europe Limited trading as Chase ('Chase') sending him an unsolicited email, after he'd opted out of marketing correspondence.

What happened

Mr P complained to Chase when it sent him an email on 8 April 2024 that he didn't think it should have. Chase didn't uphold his complaint, saying it had been intended as a service email, which it is required to send to all customers, not a marketing email. It said the main purpose of the email was to clarify and ensure customers were aware of any improved savings rate they may be eligible for.

Mr P didn't feel this resolved his complaint and so he asked us to investigate. He put things this way: '...with service vs marketing emails, it is not the intention but the content that matters.' He didn't feel that Chase had adequately explained how the email constituted 'service' as opposed to 'marketing' and he felt that Chase hadn't fully considered his complaint.

One of our investigators looked into what happened. Ultimately, the investigator didn't feel able to uphold Mr P's complaint. In summary, he felt that as Mr P had earned interest on his money held with Chase, and the email complained about highlighted a better rate of interest available to him, it looked to be in line with guidance issued by the Financial Conduct Authority ('FCA') and Information Commissioner's Office ('ICO').

Mr P disagreed, mainly saying that the regulatory guidance didn't apply here as he didn't meet the definition of a savings customer. He provided links to the FCA handbook which he relied on in support.

The complaint has come to me for a final 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.

This includes listening to call recordings provided.

I've carried out an independent review and having done so, I've reached the same overall conclusion as our investigator.

My role is to consider the evidence presented by the parties and reach an independent, fair and reasonable decision based on the facts of the case and the evidence provided by both sides. In doing so, I may not address every single detail that's been mentioned and I've summarised what happened only briefly. But it doesn't mean I haven't considered the evidence and what's been said here – it just means I haven't needed to specifically refer to everything in order to reach a decision in this case. I must consider all the evidence and information available to me and decide what's fair and reasonable in the individual circumstances of this complaint. So this is the focus of my decision here.

Chase's 8 April email included information about a limited time deal and drew attention to a new savings account that offered an initial period of extra interest over and above the standard saver rate Chase offered at the time. This was a significantly better rate than Mr P was earning on the interest-bearing account he held with Chase. His account also offered the potential to round-up spending to the nearest £1 and automatically save the difference – which would also earn interest. Mr P had previously taken advantage of this feature, and he could switch it back on at any time, but by the time he received Chase's 8 April email, he'd opted out of rounding-up.

Mr P had set mailing preferences that excluded marketing emails. So I can understand that he was trying to limit his exposure to unwanted emails and unhappy when he felt Chase's 8 April email was primarily trying to sell him a savings account he wasn't interested in.

When Mr P first contacted Chase to complain, he described the 8 April email as '...one of your service emails' which '...verges on marketing' because it included '...a bright blue hyperlink trying to get me to sign up for your promotion'. Mr P acknowledged also that there was a fine distinction between service and promotional emails and he described this email as '...borderline', but said it went too far in his view.

I appreciate how strongly Mr P feels about his complaint and the issues it raises. But Mr P is effectively asking this service to make a finding on the nature of Chase's 8 April email– is it marketing or service material? That's something the FCA and ICO are best placed to decide – my role is to decide if Chase acted unfairly or unreasonably in the circumstances.

Here, Chase took a view that drawing Mr P's attention to the potential for earning a better rate of interest was a regulatory communication. I don't think that was unreasonable, even if Mr P feels he didn't meet the regulatory definition of a 'savings customer'. I agree with Mr P when he said news about interest rates '...could also be deemed service'. And I'm mindful that in a joint letter from the ICO and FCA to UK Finance and Building Societies Association, it says: '...too many customers are sitting on low rates or not accessing products that may offer better value.'

So I can see why Chase would say that information about an offer which includes the potential for Mr P to earn a better rate of interest on his money is primarily a service email. I don't consider that the inclusion of a hyperlink to a new savings account would necessarily change what Chase categorised as a service email into a marketing promotion.

I am not saying Chase is right. I can see arguments on both sides. And to be clear, I'm not making a finding on whether or not this is a service or marketing email. I don't think I need to do so to determine what's fair and reasonable here. I say this because in the circumstances, I'm satisfied Chase acted on what it understood Mr P's requirements to be about marketing and I can't see that what Chase did was ultimately to Mr P's detriment – beyond the small amount of inconvenience and frustration it caused him. It's up to Mr P to pursue this matter with the ICO if he still wants an adjudication on whether Chase's 8 April email breached regulatory requirements.

I appreciate that Mr P feels strongly that his complaint raises an important matter of principle. But one way we would try to put things right if we upheld his complaint would be to consider whether what happened resulted in any detrimental impact on Mr P. As I've mentioned above though, he told Chase there had been none – and I haven't been provided with any further information that shows Chase's email caused Mr P any financial loss or other lasting negative impact.

I would also have to take into account that the email was a one-off and Mr P closed his Chase account when he complained, effectively limiting the likelihood of further unwanted emails from Chase.

It was open to Mr P to simply disregard or delete unwanted emails. I think it's likely that despite his best efforts to opt-out of marketing emails generally, he inevitably will receive some communications he's not interested in. This is simply part and parcel of having an email account. Compensation is usually reserved for cases where the impact is significant or long standing or it causes lasting adverse consequences – a single email slipping through that he shouldn't have received and that had no impact beyond the frustration of receiving it wouldn't normally be enough of a reason to warrant any form of redress.

Mr P suggested that Chase consider sending differently worded emails to customers according to whether they had opted-in or opted-out of receiving marketing communications. I don't have any authority to tell Chase how to draft communications to customers, but this may be an idea it will wish to consider.

I've set out that I don't think that our service is the appropriate body to adjudicate on whether what has been sent to Mr P constituted marketing material as opposed to a service email. And I've explained why I wouldn't be asking Chase to do anything further even if I did think this was a complaint I could uphold. I appreciate that Mr P was hoping for a different outcome but for all the reasons I've explained more fully above, I don't uphold this complaint.

My final decision

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 P to accept or reject my decision before 20 December 2024.

Susan Webb
Ombudsman