DRN-5761805

Financial Ombudsman Service

The complaint

Mr O has complained J.P. Morgan Europe Limited, trading as Chase, won't refund him for two transactions he didn't willingly make.

What happened

On a night in July 2024, Mr O was out in a nightclub area. At some time after midnight, he was approached by a gang of youths and his mobile phone was stolen. At the time, Mr O believed his phone was open as he'd been using it.

He managed to get his phone back after the gang had taunted him with it. Distressed by what had happened, Mr O went for a massage and ended up getting an uber home about 3:30am. He noticed that there'd been a fraudulent activity from his main account (with another bank I'll call M) and claimed this money back.

Mr O noticed there'd also been two payments made from his savings account with Chase to a new payee set up on his account. He asked Chase to refund this money. They wouldn't do so as they believed they could show the payments were properly authenticated using Mr O's biometrics.

Mr O brought a complaint against Chase, and M, to the ombudsman service.

Our investigator believed there was sufficient evidence for Chase to believe the payments had been authorised by Mr O in accordance with the Payment Services Regulations 2017. She wasn't going to ask Chase to do anything further.

Unhappy with this outcome, Mr O has asked an ombudsman to consider his complaint. He stressed that whilst his biometrics may have been used, he had never consented to these two transactions.

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 outcome as our investigator. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

It's worth stating that I can choose which weight to place on the different types of evidence I review, including technical evidence, provided by financial institutions along with complainants' persuasive testimony.

When considering what is fair and reasonable, I'm required to take into account: relevant law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to have been good industry practice at the relevant time.

The regulations which are relevant to Mr O's complaint are the Payment Services Regulations 2017 (PSRs). These primarily require banks and financial institutions to refund customers if they didn't make or authorise payments themselves. There are exceptions to this and that would include if the customer had acted with gross negligence or intent to allow any security details – including the card and PIN or online banking details – to be used by someone else.

I note Chase has provided no evidence to suggest Mr O acted in a grossly negligent manner, but they have confirmed that Mr O's unchanged biometrics were used to access his account, set up the new payee and make two payments of £500 and £950 on 15 July 2024.

I should state that I don't doubt Mr O has been the victim of a crime. I can't see any evidence of him reporting this to the police although I accept that not everybody who is a victim of mobile phone theft or misuse reports this. I say this because the area he was in is unfortunately a hotspot for this type of fraud. I'm also aware of the various means thieves use to try and get the phone owner to authenticate their phone and get access to banking apps.

In terms of the PSRs, I am satisfied there is a point of compromise. However, I have to balance this with the fact that Mr O's own biometrics were used to set up the payee and make the two payments.

I appreciate Mr O's testimony that he was taunted by the thieves and his own phone was waved in front of his face – therefore enabling biometric access – which meant the fraudsters could make the disputed payments.

I find this slightly implausible and think it's much more likely that Mr O was threatened and found it safer, understandably, to just comply. As our investigator explained, even if Mr O had acted under duress, the PSRs don't provide for him to be refunded. This unfortunately is the case. Whilst Mr O is correct that authorisation under the PSRs has two parts – authentication and consent – the definition of consent is not what we'd see with a general use of that term. So for example, consent can exist even if the payee doesn't know the amount to be paid.

The way I've looked at this is slightly different, but the outcome remains the same. I'm sorry to say that I believe Mr O has acted with intent by making these transactions, albeit under duress. This means that I won't be asking Chase to refund Mr O.

I know Mr O has highlighted that M was asked by our service to refund him. I've reviewed this case file and can see this was done on the basis that M was unable to provide details of how the transaction from Mr O's account was authenticated as required under the PSRs.

I appreciate Mr O will be disappointed in this outcome, but this brings to an end the involvement of our service in this complaint.

My final decision

For the reasons given, my final decision is not to uphold Mr O's complaint against J.P. Morgan Europe Limited, trading as Chase.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 6 October 2025.

Sandra Quinn

Ombudsman