

## **The complaint**

Mr M has complained that J.P. Morgan Europe Limited (trading as Chase Bank) won't refund transactions he says he didn't make or otherwise authorise.

## **What happened**

In late 2022, Mr M went to a bar abroad. That evening, over £2,000 was spent at the bar from his Chase current and savings account, using his phone and his biometric Face ID.

On returning to the UK, Mr M reported the matter to Chase. He's explained that he made the first payment, but his drink was spiked and he was sick. He was thrown out of the bar and passed out on a busy street, but had left his phone inside. He suggested that someone – such as staff from the bar – had taken his phone and waved it in front of his face while he was unconscious in order to put the payments through.

Chase held Mr M liable for the payments in dispute. Mr M came to our service.

Our investigator looked into things independently and didn't uphold the complaint. They pointed out that the Face ID function for Mr M's device required that he was aware and looking into the camera. They noted the spending had been funded by a transfer from Mr M's savings. It had taken place over the course of the evening and there was still a significant sum left in his account afterwards, which is not consistent with a pattern of theft.

Mr M appealed, so the complaint's been passed to me to decide.

## **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.

Broadly speaking, Chase can hold Mr M liable for the payments in dispute if the evidence suggests that he authorised them.

I'm satisfied from Chase's technical evidence that the payments in dispute used Mr M's genuine mobile phone, and his biometric Face ID. Mr M suggested that there must have been some sort of failure on Chase's end to properly verify the payments, but I can see that these transactions were properly authenticated. The question, then, is whether the evidence suggests that it's most likely Mr M consented to the transactions, or not.

Mr M has explained that he was unconscious, unaware of making any payments, and that the transactions were made without his knowledge or consent. But I'm afraid that, as our investigator explained, his phone's Face ID function required as standard that his eyes were open and he was looking into the camera, such that it couldn't be used if he was unaware or unconscious. And these payments were made using Mr M's Face ID. So it's not very likely or plausible that they were made without him being aware of them.

After a payment was declined, a transfer was made from Mr M's savings account to his current account in order to fund the other payments. Again, this was done on Mr M's genuine phone using his biometric Face ID. So it's not likely or plausible that this was done without him knowing about it either.

I might've expected a thief to try to take as much as possible, as quickly as possible, before they are no longer able to. But here, the disputed payments were made over the course of the evening, with significant gaps between payments, and most of the spending taking place towards the end. And there was still a significant sum left in Mr M's account afterwards. Mr M also confirmed that he still had his wallet with him, which is how he managed to return to his hotel and then later travel back to the UK. It's not very likely or plausible that a thief would steal Mr M's phone, but let him keep all his other valuables, not least if he was unconscious anyway. And it's unlikely that a thief would spread out the spending like this or leave money in Mr M's account. The pattern of spending is more consistent with what I'd expect from a genuine spend on a big night out, not least while on holiday and when payments are in a foreign currency – so one might not realise as easily just how much one is spending.

Lastly, I understand Mr M feels that Chase should've blocked these payments. But it looks like they were authorised by their genuine customer. I've not found a reason why Chase needed to block them here.

In summary, I'm satisfied that Mr M's genuine phone and biometrics were used. Based on the evidence, it's not likely or plausible that these payments were made without Mr M's knowledge and consent. It's most likely that Mr M was aware of the payments and used his Face ID to put them through. So I think it's fair for Chase to decline a refund in this case. I do understand that this will come as a disappointment for Mr M, though it is not my intention to disappoint him. But given the evidence I have, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

### **My final decision**

For the reasons I've explained, I don't uphold Mr M's complaint.

This final decision marks the end of our service's consideration of the case.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 6 September 2023.

Adam Charles  
**Ombudsman**