

The complaint

Mrs W complains that J.P. Morgan Limited trading as Chase didn't do enough to protect her from the financial harm caused by an investment scam company, or to help her recover the money once she'd reported the scam to it.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In August 2022, Mrs W saw an online advertisement for an investment company I'll refer to as "O". O was endorsed by two well-known celebrities and Mrs W could see the website appeared near the top of the search results and mimicked that of a genuine company. The home page advised that O was a leading cryptocurrency market trader and featured separate sections for complaints, enquiries, and 'About Us'. The contact us page claimed O had multiple offices around the world and Mrs W was satisfied there no negative reviews or anything to indicate it was a scam.

Mrs W provided her contact details and received a call from someone claiming to work for O, who I'll refer to as "the scammer". She told the scammer she hadn't invested before and that she had some savings, and the scammer told her she could invest as little as £250. He also said she could withdraw her profits whenever she liked and that she would be assigned a senior account manager who would give her a username and password for her account.

Mrs W made an initial payment of £250 from another account and was then contacted by someone claiming to be her account manager. He told her he'd been working in the finance industry for years and that he'd made lots of money. He used technical language about trades and said he liked to build relationships with his clients as he believed trust was key.

The account manager advised Mrs W to download AnyDesk remote access software to her device. He told her he would take a commission from successful trades at a rate she thought was reasonable and the more she invested, the higher the returns she would make.

The account manager told Mrs W she should trade in cryptocurrency to accumulate great profits. He told her to first purchase cryptocurrency through a cryptocurrency exchange company I'll refer to as "F" and that it would be moved to an online wallet on the trading platform. Between 16 September 2022 and 15 October 2022 she made several payments from her other account totalling £46,739.

Mrs W continued to make profits, and on 1 December 2022, the account manager told her O was going to liquidate her account and that he would help her to withdraw her funds before 22 December 2022, which she paid in part from her Chase account, which she had opened on the scammers advice because it meant she could move larger sums in a shorter time.

Mrs W opened the Chase account on 14 December 2022 and between 14 December 2022 and 29 December 2022, she made seven transfers from that account totalling £37,918.

She eventually realised she'd been scammed when she didn't receive any funds into her account. She complained to Chase but it refused to refund any of the money she'd lost, stating she'd received a payment alert telling her to ensure appropriate due diligence before paying a new payee.

Mrs W wasn't satisfied and so she complained to this service with the assistance of a representative. She said Chase had failed to ask probing questions or provide an effective warning. She said she wanted it to refund the money she lost to the scam and pay her £500 compensation and legal fees.

Her representative said Chase had failed to raise a chargeback request. They also argued that Mrs W had made seven payments to a new payee linked to cryptocurrency that totalled £37,918 within the space of two weeks. They said there was no payment history to compare the payments with, but the spending matched a known fraud pattern i.e. large amounts of funds leaving the account to a new payee in quick succession.

The representative said that on 14 December 2022, Mrs W received £9,922 into the account and then transferred £9,900 out of the account the following day, after which the payments increased in frequency and size. On 15 December 2022, she received £6,078 into the account and transferred the same amount to the scam the same day. They argued this pattern of spending is a known fraud indicator, and Chase should have asked probing questions about the purpose of the payments.

Chase further commented that Mrs W's account was blocked when she tried to make the first payment of £9,900 and during the subsequent call she said she was buying bitcoin as a present for herself and it had been recommended by her brother. She was asked if she trusted the recipient and she said she'd done research and wasn't being pressured or coerced to make the payment. She was told the payments would be difficult to retrieve if it turned out to be a scam and she was happy for the funds to be released.

On 15 December 2022, Mrs W made a further payment of £6,078 which was also blocked. In that call, Mrs W said she'd made regular payments to F from her other bank and had been doing it for some time. Later that day she made another payment for £3,940, which was also blocked and in the subsequent call Mrs W said she'd had a relationship with the payee for some time.

On 29 December 2022, Chase contacted Mrs W when she made another payment for £5,000. During the call she said F was a trusted payee and she'd been dealing with them since last August or July. The payment didn't contain a reference, so she asked for it to be cancelled so she could resubmit the payment with a valid reference. Chase provided further information on the risks of investing in cryptocurrency and transferring funds via faster payment.

Our investigator recommended that the complaint should be upheld. She explained that Chase's T&Cs explain that if a customer was tricked into sending someone money for what they thought was a genuine purpose, but turned out to be fraudulent, they'd get their money back unless they should've known they were being tricked. She accepted Chase had questioned Mrs W about the payments but she noted it didn't ask if anyone was helping or advising her and without this ever being discussed she didn't think Mrs W could be expected to know about the very high risks associated with cryptocurrency.

She was satisfied there was nothing to indicate that O was a scam when Mrs W made the first payment such as poor reviews or warnings on the Financial Conduct Authority ("FCA") website. Mrs W seen the scammer's name on O's website and she didn't know that a celebrity endorsed investment would indicate it was a scam. Further, before making the

payments from her Chase account, Mrs W had received £4,234 credits into her other account from the investment. So, our investigator didn't think Mrs W should've known she was being tricked into sending money to a fraudster therefore she recommended Chase should refund the money she'd lost and pay her £250 compensation.

Chase has asked for the complaint to be reviewed by an Ombudsman. It has argued that the T&Cs should only stand if it did nothing to make Mrs W realise she was being scammed and it had done all it could to make sure she was informed based on the information she had provided.

It doesn't accept Mrs W wouldn't have gone ahead with the payments if it had told her that investments made via a broker were high risk and has argued that she gave a plausible explanation as to why she was investing and was insistent on making the payments, so further questions wouldn't have stopped her from wanting to make the payment.

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 conclusion as our investigator. And for largely the same reasons.

The CRM Code requires firms to reimburse customers who have been the victims of Authorised Push Payment ('APP') scams, like the one Mrs W says she's fallen victim to, in all but a limited number of circumstances. But the CRM code didn't apply in this case because Mrs W was paying an account in her own name.

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

There's no dispute that this was a scam, although Mrs W didn't intend her money to go to scammers, she 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.

Prevention

The payments did flag as suspicious and there were several calls during which Chase discussed the payments with Mrs W. Unfortunately, there were key facts about the circumstances of the investment which didn't come to light during the calls and this meant Chase was unable to detect that the payments were being made to a scam.

However, 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've considered whether Mrs W should have known she was being tricked when she made the payments.

Chase has argued that Mrs W was insistent on making the payments, so further questions wouldn't have stopped her from wanting to make the payment. It has also said that she wasn't honest during the calls she had with it and it did all it could to protect her based on the information it had.

I accept that during the first call Mrs W didn't tell the call handler that she was being assisted by a third party and this meant Chase was unable to detect the scam. But she did mention having an account manager in the third call and she wasn't directly asked whether she was being assisted by a third party or if she had a broker or an account manager, so I don't think she deliberately misled Chase on this point. And I think more probing questions around the circumstances of the investment might have uncovered key information including the fact she'd been told to download AnyDesk which would have assisted the call handler to identify that she was being scammed.

Further, while I accept Mrs W was given some scam advice, I don't accept the warnings were robust or effective enough to have brought to her attention the fact she was being scammed. And she didn't ignore advice to do more checks before going ahead with the payments, she was merely asked to confirm that she'd done due diligence, which she thought she had.

This was a sophisticated scam and Mrs W didn't know celebrity endorsements and the use of AnyDesk were red flags. She didn't see any negative reviews about O and while there was an FCA warning, this post-dated her first payment to the scam, and she wouldn't necessarily have known to check the FCA register. Mrs W was satisfied that O's website was at the top of the search results and appeared genuine and she was impressed by what the account manager had said about his experience. Significantly, she believed what she was told about the fees she was being required to pay and had received credits into her other account from the investment. She thought the account manager's commission was reasonable and it wasn't unreasonable that she believed the more she invested, the higher the returns she would make.

So, having considered all of the circumstances, I don't think it was unreasonable that Mrs W failed to identify some of the warning signs that she was being scammed and I don't think the circumstances were such that she should've known she was being tricked. Because of this, I agree with our investigator that Chase should refund the money Mrs W lost to the scam.

Compensation

Finally, our investigator has recommended that Chase should pay Mrs W £250 compensation and I'm satisfied that's fair.

My final decision

For the reasons I've outlined above, my final decision is that J.P. Morgan Europe Limited trading as Chase should refund the money Mrs W lost from the first payment onwards plus 8% simple interest*, per year, from the respective dates of loss to the date of settlement.

*If J.P. Morgan Limited trading as Chase deducts tax in relation to the interest element of this award it should provide Mrs W with the appropriate tax deduction certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 28 January 2024.

Carolyn Bonnell
Ombudsman