DRN-4147135

**The complaint**

Mr G is unhappy that J.P. Morgan Europe Limited trading as Chase ("Chase") will not refund the money he lost as the result of a scam.

Mr G has used a representative to bring his complaint to this service. For ease, I will refer solely to Mr G throughout this decision.

**What happened**

All parties are familiar with the details of the scam, so I will provide only a summary here. Mr G saw an advert on a social media platform for crypto trading from a company I call B.

Mr G was persuaded to make the following payments to a crypto exchange via debit card. The funds were converted to crypto and were then sent on to scammers.

| Transaction Number | Date | Amount | Merchant / Payee |
|---|---|---|---|
| 1 | 10 March 2022 | £500 | Binance |
| 2 | 10 March 2022 | £500 | Binance |
| 3 | 14 March 2022 | £500 | Binance |
| 4 | 15 March 2022 | £500 | Binance |
| 5 | 18 March 2022 | £500 | Binance |
| 6 | 25 March 2022 | £500 | Binance |
| 7 | 28 March 2022 | £500 | Binance |
| 8 | 28 March 2022 | £1,500 | Binance |
| 9 | 30 March 2022 | £400 | Binance |
| 10 | 31 March 2022 | £2,000 | Binance |
| 11 | 6 April 2022 | £2,000 | Binance |
| 12 | 8 April 2022 | £5,000 | Binance |
| 13 | 8 April 2022 | £5,000 | Binance |
| 14 | 9 April 2022 | £2,000 | Binance |
| 15 | 11 April 2022 | £1,000 | Binance |
| 16 | 29 April 2022 | £5,000 | Binance |
| 17 | 31 August 2022 | £500 | Binance |
| 18 | 5 September 2022 | £1,000 | Binance |
| 19 | 8 September 2022 | £4,000 | Binance |

Mr G asked to withdraw part of his 'investment returns'. He was told that he would need to pay a fee for taxes. After some back and forth, Mr G realised that he had been scammed.

Our investigator upheld this complaint because he said that payment 12 should have been considered out of character for Mr G's account and Chase should have intervened at this point. He felt that had an intervention occurred at that point, then the scam would likely have been stopped and therefore Chase should refund Mr G the money he lost from transaction

12 onwards. However, the investigator did think that Mr G was partially responsible for his own loss, so he recommended a 50% reduction in the refund he was due.
Chase agreed but Mr G did not. So the complaint has been passed to me to issue a 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.

There's no dispute that Mr G made and authorised the payments. Mr G knew who he was paying, and the reason why. At the stage he was making these payments, he believed he was making payments to invest in cryptocurrency. I don't dispute Mr G was scammed and he wasn't making payments for the reason he thought he was, but I remain satisfied the transactions were authorised under the Payment Services Regulations 2017.

It's also accepted that Chase has an obligation to follow Mr G's instructions. So, in the first instance Mr G is presumed liable for his loss. But there are other factors that must be considered.

To reach my decision I have taken into account the law, regulator's rules and guidance, relevant codes of practice and what was good industry practice at the time.

The Contingent Reimbursement Model (CRM) code does not apply in this case as Chase are not part of this scheme. Nevertheless, I still think that Chase was required to have:

- been monitoring accounts and payments made or received to counter various risks, including fraud and scams, money laundering, and the financing of terrorism.

- had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (amongst other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which financial institutions are generally more familiar with than the average customer.

- in some circumstances, irrespective of the payment channel used, taken additional steps or made additional checks before processing a payment, or in some cases declined to make a payment altogether, to help protect its customers from the possibility of financial harm.

I think Chase should be liable for payments 12 Onwards. I'll explain why.

*Payments 1 - 11*

There is a balance to be struck. Banks and building societies have obligations to be alert to fraud and scams and to act in their customers' best interests. But they can't reasonably be involved in every transaction. In this instance Mr G's account was relatively new

So overall I don't think that Chase needed to intervene during these transactions.

*Payment 12*

I think Chase ought to have carried out further checks and spoken to Mr G before processing this transaction. It was higher than the first payment, and represented, combined with payment 11, over 10,000 to a crypto exchange in one day.

Chase is aware of the typical patterns of scams like this – that customers often move money onto a crypto account in their own name before moving it on again to scammers; and that scams like this commonly take place with multiple payments, starting off with smaller sums and then increasing in amounts. I think the large increase in the amount that Mr G was sending, coupled with the two payments being on the same day should have prompted Chase to question what the payment was for.

I also appreciate that Mr G's loss didn't materialise directly from his Chase account in these circumstances. But even though he was transferring funds to a crypto account in his own name, I still think that Chase ought to have taken a closer look at payment 12 – given the significant risk of fraud associated with cryptocurrency investments at the time.

The FCA and Action Fraud published warnings about cryptocurrency scams in mid-2018. And by January 2019, cryptocurrency scams continued to increase in frequency. So, by the time Mr G started making his investments in April 2022, it is reasonable to say Chase ought to have had a good enough understanding of how crypto scams work – including the fact that their customer often moves money to an account in their own name before moving it on again to the fraudster.

Therefore, I'm satisfied that Chase should've had mechanisms in place to detect and prevent this type of fraud at the time Mr G was making these payments. Had it had such mechanisms in place, I think this likely would've led to it intervening to ask further questions about payment 12.

I would expect Chase to have intervened and asked Mr G who the payment was for, what it was for, and for the context surrounding the payment. It could, for example, have asked how he had been contacted, whether he'd parted with personal details in order to open a trading account, whether he was being helped by any third parties e.g. a broker, and how he had come across the investment in this case via a social media advert.

I have no reason to believe Mr G wouldn't have been open with Chase, and I think he would have taken its intervention seriously. So, I think Chase would have quickly learned from its conversation with Mr G the basic background to the payment instruction – that he was buying cryptocurrency which was sent onto what he thought was a cryptocurrency type trading investment which he'd decided to pursue after seeing an advert on social media.

Even though the conversation would have identified the payment was going to Mr G's own cryptocurrency account (before being sent onto the scammers), the conversation shouldn't have stopped there on the basis that the money appeared to be going to somewhere safe and within Mr G's control. This is because by 2022 Chase was well aware – or ought to have been well aware – of how scams like this work – including that the customer often moves money onto an account in their own name first, before moving it on again to scammers.

So, I think Chase would have been concerned by what the conversation would most likely have revealed and so warned Mr G, explaining the typical characteristics of scams like this. Had it done so, I think Mr G would have listened and recognised he was at risk. I am satisfied he would have had second thoughts if Chase had intervened effectively given that a warning would be coming from his trusted bank.

It follows I think Mr G would not have gone ahead with payment 12, nor any subsequent payments had Chase intervened at that point.

I've considered carefully whether Mr G should hold some responsibility for his loss by way of contributory negligence.

We have asked Mr G to provide information about B and his interactions with it. Mr G has not provided much, but one of the things that he did provide seems to have been a prospectus which highlights investing in a crypto coin and this seems to promise between 300% and 566% annual returns by investing in a crypto coin prior to it being released to the public. I don't think that this is a reasonable rate of return - even for the launch of a crypto coin, especially in 2022. Overall, given the lack of information that Mr G has provided about the scam, combined with him finding the investment on social media, coupled with the above, there is not enough for me to say that Mr G acted in a reasonable manner and therefore on balance I think that he contributed to his own loss – essentially by not doing enough research beforehand to assure himself that it was a genuine investment.

So overall and having considered everything I feel that it would be appropriate to reduce the amount of compensation due to Mr G by 50%.

I note Mr G's representative comments about the findings in a different case. Firstly, I should say that all cases are decided on their own merits. Secondly, the payments in question for this case are debit card payments rather than transfers. This means they are pull payments, not push payments. The terms and conditions that Mr G's representative have quoted refers to a customer sending money, so it is arguable whether this covers pull payments. It also caveats that payments won't be refunded if the customer is at fault in some way. So even if it did apply to these transactions, we would still likely make a reduction if we thought that Mr G was at fault. So overall, whilst I have carefully considered the points raised, I do not think that they change the outcome of this complaint.

I have thought about whether Chase could have recovered the funds via a chargeback, but in this instance as the funds were sent to a crypto account in his own name and were used to buy crypto, I don't think a chargeback would have been successful. This is because Mr G essentially got what he paid for. It was only when he transferred the crypto out of his wallet to B, did the loss occur. I also don't think that there was any other way to recover the funds.

**Putting things right**

To put things right, Chase will need to

- Refund 50% of transactions 12 onwards; and
- Pay 8% simple interest, per year, on these transactions from the date of each transaction to the date of settlement, less any appropriate tax

**My final decision**

I uphold this complaint in part and require J.P. Morgan Europe Limited trading as Chase ("Chase") to pay the redress outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 January 2024.

Charlie Newton
**Ombudsman**