

The complaint

Mr M complains J.P. Morgan Europe Limited trading as Chase (“Chase”) refuses to refund him for transactions on his account he says he didn’t make.

What happened

The facts of this case are well known to both parties, so I won’t repeat them in detail here.

In summary, Mr M says he was abroad in a bar with his girlfriend when he believes their drinks were spiked. Several transactions were subsequently carried out on Mr M’s account which he says he wasn’t responsible for.

Chase says the transactions in dispute were all carried out using ApplePay which required passcode or biometrics to be approved. Mr M had his device throughout the time of transactions and has told us that his ApplePay can only be accessed using his fingerprint - so Chase is satisfied that Mr M authorised the transactions.

Our investigator considered this complaint and decided not to uphold it. Mr M was not happy with this outcome, so the complaint has been passed to me for 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.

I’d like to reassure both parties that although I’ve only given an overview of what happened, I’ve read and considered everything we’ve been provided in its entirety.

When considering what’s fair and reasonable, I’m required to take into account relevant law and regulations; the regulator’s rules, guidance and standards; the codes of practice; and, where relevant, what I consider good industry practice at the relevant time.

Where there’s a dispute about what happened, and the evidence is incomplete or contradictory, I must make my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence.

Generally speaking, Chase is required to refund any unauthorised payments made from Mr M’s account. But Mr M is liable for transactions on his account that he himself authorised. Having considered the evidence, testimonies, and relevant legislation (The PSR’s) I think Mr M did authorise these transactions himself, so I am not upholding this complaint.

Chase have provided evidence to show that all the transactions in dispute were made using ApplePay from Mr M’s device. And the evidence suggests Mr M had his phone the whole time. ApplePay needs to be authenticated using passcode or biometrics and Mr M has told us that his device is set up to allow fingerprint ID only. This means Mr M must have authenticated these transactions himself, with his own fingerprints. Mr M has also told us

that his girlfriend saw someone helping him use his phone to carry out the transactions. So, I think its likely Mr M made the transactions in dispute.

Mr M says he was drugged at the time, so he couldn't have authenticated these transactions as he didn't know what was going on. He also said he doesn't remember what happened at the time. But this does not mean that Mr M didn't authorise these transactions. All the transactions were made using Mr M's fingerprint and based on what we've been told I don't think he was unconscious; in fact, his evidence is that his girlfriend saw him sitting with someone else at the bar when the transactions were made. So, his evidence is that he was awake and conscious at the time.

I am sure this outcome will come as a disappointment to Mr M but based on the evidence I've seen I can't say that Mr M didn't authorise these transactions, so I won't be upholding this complaint.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 March 2024.

Sienna Mahboobani
Ombudsman