

The complaint

Mr H complains that JP Morgan Europe Limited (trading as Chase) refused to refund him for transactions he said he didn't make.

What happened

On 17 September 2022, four transactions to the same merchant debited Mr H's Chase account. These transactions totalled over £7,000.

Mr H says he didn't make these payments. He says that he was drugged in a nightclub overseas and that the payments were made without his permission when he was blacked out. He contacted Chase, but Chase said the payments had been authorised using a digital wallet on Mr H's registered device and so Mr H must have authorised them himself, so Chase refused to refund the payments to Mr H.

Mr H didn't agree and contacted this service. Mr H told our Investigator that he'd been at an adult entertainment venue in a foreign country but had become separated from his friends, he says he then remembers very little until he awoke in his apartment the next day. Mr H said that to access his phone, he had face identification and a passcode, which he hadn't shared with anyone, but he didn't know what might have happened when he'd been drugged. He thinks that individuals at the nightclub might have used his face to unlock his phone when he was drugged, and then made the payments themselves.

Our investigator didn't uphold Mr H's complaint. They pointed out that biometric data had been used for logging into Mr H's Chase app at the time of the transactions, and noted that the funds used to make the payments had been transferred from another account Mr H held with a different bank. Overall, they felt it was more likely than not that Mr H had authorised the transactions himself or otherwise allowed them to be made.

Mr H wasn't satisfied, so as no agreement could be reached his complaint has been passed to me for review.

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 are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. These say that the payment service provider (here, Chase) must show the transaction was authenticated. And here, I've seen the computer evidence that Mr H's genuine card details were used via a digital wallet that he had set up on his phone. So the disputed payments were authenticated.

The regulations also say that it's necessary to look at whether the card holder authorised the payments. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them.

The payments were made using a digital wallet on Mr H's registered device, which could only be accessed using Mr H's face ID biometrics or a PIN. Mr H has said he has not shared his PIN with anybody, and it seems likely that face ID was used here as Chase's records show that Mr H's Chase app was also unlocked using biometrics during the period of the transactions.

Mr H said that he was drugged, but face ID requires that the individual unlocking the phone or app be alert with their face unobscured and their eyes open. It's difficult to see how a third party could therefore have repeatedly used face ID to unlock Mr H's phone, access his Chase app, and also make the payments without his knowledge. If Mr H had been drugged so severely that he was unaware of anything that was going on, I think it's unlikely his face ID would have successfully passed the biometric matching test.

I've also considered the other transactions that happened around the disputed payments, Mr H says that the fraudsters must have transferred the funds from his main current account with another bank to his Chase account. But I've not heard any reasonable explanation for why a fraudster would do that. If they had access to Mr H's main bank account to transfer the funds to Chase, then they could simply have made the payments from that account in the first place.

I also think I must bear in mind that Mr H has not indicated that he contacted police in the country where the payments happened, or sought medical attention after apparently believing he had been drugged. So I have no independent evidence to support what he says happened. Even the friends he was on holiday with were apparently not with him at the time of the claimed fraud, and so are unable to verify exactly what happened in the nightclub.

Taking all these factors into account, I think it's more likely than not that Mr H authorised the transactions himself or otherwise allowed them to be made. And with that in mind, while I note Mr H's comment that he thinks the payments should have been flagged as suspicious, I don't think that would have changed the outcome here, as I'm satisfied it's more likely that Mr H did know the payments were being made. It follows that I won't be asking Chase to refund them to him.

I also note Mr H's comments about how his claim was handled, but I'm satisfied that Chase treated him fairly and reasonably given the circumstances. I don't think there were any service failures here that would merit compensation of any kind.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 21 September 2023.

Sophie Mitchell
Ombudsman