

## **The complaint**

Mr C complained because J.P. Morgan Europe Limited, trading as Chase, refused to refund him for transactions he said he didn't make.

## **What happened**

On 5 June 2023, Mr C rang Chase to report that his phone had been pickpocketed while he was on holiday abroad. The phone case had also held Mr C's Chase card, and his cards with two other financial organisations. Mr C rang all the banks to report the theft and stop his cards.

Chase told Mr C that there had already been some cash withdrawals and attempted withdrawals. In sterling equivalents, these were:

- Attempted withdrawal for £591.34, which was declined on the basis of exceeding the daily limit;
- Another attempted withdrawal seconds later for £493.43, which was again declined on the basis of exceeding the daily limit;
- A completed withdrawal a minute later for £297.61;
- A completed withdrawal three minutes later for £101.78;
- An attempted withdrawal two minutes later for £52.82, which was declined on the basis of exceeding the daily limit;
- A completed withdrawal just over an hour later for £18.28;
- An attempted withdrawal a minute later for £36.57, which was declined on the basis of exceeding the daily limit;
- An attempted withdrawal three minutes later for £18.29, which was declined on the basis of exceeding the daily limit.

The total cash taken was therefore £417.68.

Chase blocked Mr C's card, marking it as stolen. There were further attempted withdrawals, which were declined because the card had now been blocked.

The next day, Chase rang Mr C to ask for more information. Mr C said he hadn't used his Chase card since he'd been abroad. He said he hadn't written down his PIN, and said his PIN for his Chase card was different from that for his other bank cards. Chase told Mr C that it couldn't uphold the fraud claim, because there was no clear evidence to understand how the thief had obtained Mr C's PIN. Mr C asked for this to be reviewed, but Chase didn't change its mind.

Mr C complained. He asked for a call back the next day, which the advisor agreed. In the afternoon of the following day, Mr C rang again because he hadn't received the agreed call back. Chase offered a call the following day, when it did phone Mr C. It apologised for the missed call, and said the complaint was still being investigated.

Chase rang Mr C on 14 June, and said it was partly upholding his complaint. It upheld his complaint for poor customer service, and paid him £50 for the inconvenience. It didn't uphold the fraud claim.

Mr C wasn't satisfied and contacted this service. He said that he hadn't written his PIN down, or divulged it to anyone, but Chase continued to imply it was his fault, which he believed to be wrong. He explained that he'd been reimbursed by the suppliers of his credit card. He wanted Chase to reimburse him with £417.68 for the disputed transactions.

Our investigator didn't uphold Mr C's complaint. He said that Chase could hold Mr C liable for the transactions if it believed it was more likely than not that Mr C had made or authorised the transactions himself. As there was no point of compromise for Mr C's PIN, the investigator thought it was likely that Mr C, or someone he was travelling with, authorised the disputed transactions.

Mr C didn't agree. He explained that he'd had three cards stolen, which he held with different financial organisations. The PIN for one of them might have been "shoulder surfed" with the thief watching Mr C enter the number, because he'd previously used just that one card while abroad. The PINs for all three cards were different. Mr C also said that he'd had a refund for the third card, which was a credit card, even though that card, like the Chase one, hadn't been "shoulder-surfed."

Mr C was also unhappy with the investigator's view that he'd made or authorised the withdrawals. He pointed out that there had been other transactions declined before and after. So he thought someone had tried to withdraw larger amounts and kept reducing the amounts until they could withdraw cash.

Mr C also said that he'd maintained throughout that the credit card company had refunded him, but Chase hadn't. He also asked whether the onus wasn't on Chase to freeze the card or call him to check. He said that with other providers that was what happened, so he believed Chase should have such a process in place, and so he should receive a refund.

Mr C asked for an ombudsman's 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.

First, I'm sorry to hear that Mr C was pickpocketed while on holiday abroad, and I recognise that would have been an upsetting experience.

There are regulations which govern disputed transactions. The relevant regulations for Mr C's complaint about the disputed transactions on his debit card with Chase are the Payment Services Regulations 2017. 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 regulations also say that account holders can still be liable for unauthorised payments under certain circumstances – for example if they've failed to keep their details secure.

This decision only relates to Mr C's complaint about Chase, and I can't comment on the refund decisions taken by the other two financial organisations with which Mr C had cards which were stolen. I can only look at the individual circumstances and evidence of the case before me. However, I think it might help to explain that different rules apply for debit cards – such as Mr C's card with Chase – and credit cards, such as Mr C's card with the credit card company which refunded him. Where a credit facility has been used, the relevant legislation is Section 83 of the Consumer Credit Act 1974. It wouldn't be appropriate for me to detail that in relation to Mr C's complaint about his debit card with Chase, but in summary the rules relating to credit and debit cards are slightly different.

In considering Mr C's complaint about Chase, I've considered whether it's more likely than not that Mr C, or someone close to him, carried out the disputed transactions.

To do so, I've looked at the technical evidence from Chase. This shows that Mr C's genuine card was used, because the genuine chip was read. This isn't in dispute because Mr C reported his card as stolen.

But the technical evidence also shows that the transactions used the correct PIN. This is a key issue here. The technical evidence shows that there were no failed attempts to enter the correct PIN. When transactions were rejected, as I've set out above, they were rejected because of the daily withdrawal limit. So whoever carried out the transactions knew the correct PIN from the outset. It's most unlikely that anyone could correctly guess a PIN, as there are 10,000 possible combinations of a four-digit PIN. Mr C hadn't used his Chase card before while on holiday, so he couldn't have been "shoulder surfed" by someone watching him enter his PIN. Mr C also said that – sensibly – he had different PINs for all three cards. This means the thief couldn't have known Mr C's Chase PIN by using the same PIN as they had "shoulder surfed" on one of the other cards.

Logically, this leaves only two possibilities. Either Mr C, or someone close to him, carried out the disputed transactions, or the PIN must have been recorded in some way in the phone case so that the thief could use it.

I can't know for certain what happened as I wasn't present. When this happens I take my decision on what I think is more likely than not to have happened. Here, I don't think it's likely that Mr C carried out the transactions himself. I don't know anything about his travelling companions, but if anyone in his party did carry out the transactions and knew his PIN, it's likely they would also have known his credit limit. I've borne in mind that Mr C reported the loss promptly; and his evidence comes across as genuine. Importantly, the pattern of the transactions, which I've set out in full above, is more indicative of a fraudster who didn't know the daily limit on the card, and was practised in altering the request until they maximised what was available. I recognise that this pattern can sometimes be copied by card holders who want to disguise the fact that they carried out the transactions themselves, but on balance I don't think that's what happened here. I think it's most likely that Mr C was the victim of theft as he says, and that the transactions were carried out by a third party fraudster.

This only leaves the option that the PIN was in some way obtained by the thief from information in the phone case. I recognise that Mr C said he hadn't written down his PIN. It could, however, be something more subtle than that. For example, if he had used part of his date of birth as his PIN, and the case also contained evidence of that. This is only one example, and I don't know what Mr C's PIN was and I'm not saying this is how it happened. Logically, however, I can't see any other explanation for how the thief knew the correct PIN, than that it was obtainable through the phone case which was stolen.

The Payment Services Regulations provide that a payment service user (here, Mr C) has obligations in relation to payment instruments (the card) and personalised security credentials. As there is no clear way in which Mr C's PIN was obtained by the thief, Chase was entitled to refuse a refund of the disputed amounts. I find that it acted within the Regulations when it did so.

Mr C also asked whether there was an onus on Chase to freeze the card or call him to check. Banks have to balance their responsibility promptly to make payments which customers have requested, with fraud prevention measures. To take an extreme example, it wouldn't be proportionate if every withdrawal led to a card being frozen. Every bank takes its

own decisions about where that balance lies, and the security measures and triggers for checks are confidential, for security reasons. Looking at the circumstances here, where the genuine card and correct PIN were used, I can't say that I think Chase should have frozen Mr C's card.

I consider that the £50 which Chase paid Mr C for customer service was fair and reasonable.

In summary, I consider that Mr C had an unfortunate experience here, and I accept it's likely that he genuinely didn't make the transactions himself. As, however, there is no clear way in which the thief could have known Mr C's correct PIN without finding it in the stolen case, I find that Chase acted within the regulations when it refused to refund Mr C. So I don't uphold this complaint.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 20 January 2024.

Belinda Knight  
**Ombudsman**