

The complaint

Mr O complains J.P. Morgan Europe Limited trading as Chase (Chase Bank) have refused to reimburse him for several disputed transactions carried out on his account on 3 June 2023.

What happened

Mr O says he was out at a nightclub while abroad on 3 June 2023 and he thinks his drink was spiked. During which time he says several transactions were carried out which he didn't authorise. Initially Mr O complained about transactions made to the nightclub using his apple pay, but he has since decided not to peruse those transactions as he says he can't remember if he authorised them or not. The transactions now in dispute consist of chip and PIN transactions at a cash machine and transfers to a cryptocurrency account held by Mr O. The transactions amounted to a total of £3,321.13.

Chase Bank say Mr O told them he gave his PIN to the bar tender when paying for some drinks and that amounts to gross negligence - so they won't be refunding any of the payments made via chip and PIN. Chase Bank also say that they will not refund the payments made to his cryptocurrency account as they required biometrics to confirm the payment through Mr O's Chase bank mobile app. And they think it's likely Mr O himself carried out these transactions himself.

Our investigator considered this complaint and decided not to uphold the complaint. Ultimately, he felt that there was not enough evidence to show the Mr O's PIN was compromised and the evidence showed that Mr O's Chase Bank app was accessed several times in between the fraudulent transactions and this secured by biometrics. So, he concluded that Mr O must have been present with his device and accessed his mobile app at the time, so it's more likely than not that he authorised the transactions.

Mr O is unhappy 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.

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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 and the Consumer Credit Act 1974. The basic position is that Chase Bank can hold Mr O liable for the disputed payments if the evidence suggests that it's more likely than not that he made

them or authorised them.

I've seen evidence that the two transactions made at a cash machine were completed via chip and PIN, which means Mr O's genuine card and PIN were used. Chase Bank say Mr O told them he gave the bartender at the nightclub his bank details when paying for his drink – so they have refused to refund any chip and PIN transactions. This is because it's Mr O's responsibility to ensure his security details were kept safe and, according to the Payment Service Regulations 2017, failing to do this amounts to gross negligence. Mr O says he would never have shared his PIN with anyone. He says that was raised as a possible scenario suggested by the Chase Bank representative he spoke to about his complaint. Throughout his complaint with us Mr O has maintained that he never shared his PIN, and I think it's unlikely that he would've given his PIN number to an unknown stranger in a foreign country.

Mr O says his drink was spiked at the time and he had no way of preventing the money being stolen, but that doesn't explain how his PIN was used to withdraw money from a cash machine. Mr O says his PIN was a random number given to him by Chase Bank, so I think it's unlikely anyone else would've been able to guess this. Mr O has suggested that the fraudster must have viewed his PIN from his Chase Bank mobile app. But Chase Bank have provided evidence of the app usage for that period. This shows that the app was accessed a few times but at no point was the PIN viewed in the app. Chase Bank have explained that had the PIN been viewed it would have been recorded on the app usage log – and I think that's likely to be the case. So, I've not been provided with any plausible evidence to explain how Mr O's PIN could've been compromised. It follows then that I think it's likely Mr O made and authorised the cash withdrawals himself via chip and PIN.

Mr O also disputes four transactions which were made from his Chase bank account to his cryptocurrency account. But Chase Bank have provided evidence that these transactions were made via ApplePay – which would've been secured via passcode or biometric security (usually facial recognition or fingerprints). I appreciate that Mr O's testimony is that he was drugged at the time, but as I've established above, Mr O took out money from a cash machine with his PIN, so it's likely he was conscious and able to carry out such a task at the time.

Mr O's mobile app was accessed in between the disputed transactions and money had been moved from another one of Mr O's account to fund the transactions. Chase Bank have shown that the access to the mobile banking app was also carried out using biometrics. And it's also likely that Mr O's phone had a passcode or biometric security as well. Mr O says he had some passcodes saved on the notes on his phone. But Chase Bank have provided evidence that his mobile app was accessed via biometrics and Mr O had his device and card on him when making payments to the nightclub, and also woke up the next morning with his device and cards on him. So, on the balance of probabilities, it's more likely than not that Mr O had his device, accessed his apps via biometrics or passcode and he himself made the transactions in question.

Mr O says that Chase Bank should have flagged these transactions as fraud and not allowed them to go through. However, I don't agree, and I'll explain why. I don't think Chase Bank had sufficient evidence to suspect these transactions were fraudulent. Mr O had carried out legitimate spending in the country he was visiting throughout his trip there, so the location of the transactions was not suspicious. The first three transactions were also carried out using Mr O's genuine card and PIN. The money transferred to the cryptocurrency account was sent to Mr O's own account, using his actual registered device. So, I think it's reasonable that Chase Bank these transactions were not flagged as fraudulent.

For all the reasons outlined above I am not upholding Mr O's complaint.

My final decision

I am not upholding this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 8 February 2024.

Sienna Mahboobani
Ombudsman