DRN-4416120

The complaint

Mr B is unhappy J.P. Morgan Europe Limited (trading as Chase) won't reimburse him in full for the money he lost when he fell victim to a scam.

What happened

Mr B saw an advert for an investment opportunity on social media, and registered his interest. He was contacted by someone who said they could help him with investing and sent him a link to a website with positive reviews for their services. Mr B was encouraged to open a cryptocurrency account with a third-party business (which I'll call "T") and then to make payments from his Chase account to T and then on to the scammer.

Mr B made three payments totalling over £23,000 from his Chase account. But when he mentioned what he had done to his wife that evening she immediately identified that it was a scam. Mr B contacted Chase to tell it what had happened. Chase looked into the payments and refunded the first two to Mr B – for £150 and £8,124. It says this is because it didn't intervene in the first payment and, when it spoke to Mr B about the second payment it didn't provide him with any appropriate warnings despite the fact that Mr B had told it the payment was for an investment. But Chase told Mr B it would not be able to refund the last payment he made – for £15,000 – because it had spoken to him when he made that payment and felt it had provided appropriate warnings, but that Mr B had not been honest about what this payment was for. So Chase didn't feel it could have done more to prevent this payment being made.

Mr B was unhappy with Chase's response and so he referred his complaint to our service. One of our Investigators looked into what had happened, and ultimately they felt that Chase could have done more when questioning Mr B about the third payment, particularly given the previous contact about the earlier payment to the same beneficiary. They felt that, if Chase had questioned Mr B more about what was happening, then the scam would have been uncovered and the last payment could have been prevented. However, the Investigator also felt that Mr B should bear some responsibility for what had happened. They did not consider he had done enough to ensure the firm he was dealing with was legitimate, and felt there were some red flags which should have indicated to Mr B that something may be amiss.

So our Investigator recommended that Chase refund 50% of the third payment, plus some interest.

Mr B accepted the Investigator's findings, Chase did not. It maintains that Mr B lied to it about the reason for the third payment, and so does not feel that it could have done more to intervene.

As no agreement could be reached, this case 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.

Having done so I've reached the same conclusion as our Investigator, and for largely the same reasons.

It's not disputed that Mr B authorised the payments that are the subject of this complaint. So as per the Payment Service Regulations 2017 (which are the relevant regulations in place here) that means Mr B is responsible for them. That remains the case even though Mr B was the unfortunate victim of a scam.

Chase also includes details in its terms and conditions about when it will refund authorised payments. Specifically, those terms state:

"If, taking everything into account when the payment was made, we (Chase) find you should've known you were being tricked into sending money to a fraudster you won't get a refund."

Chase has suggested that Mr B did not carry out appropriate due diligence, the implication being that he should have known he was potentially being tricked given how little he knew about the investment firm he was dealing with. And I agree that, given what he knew at the time, Mr B should have known he was potentially at risk of financial harm. It doesn't appear that he did any research into the people he was dealing with and there were features of the scam that should have given him pause for thought. For example, the returns really being too good to be true and that he'd been told his investment capital was guaranteed.

With all this in mind, Mr B is not automatically entitled to a refund. But the regulatory landscape, along with good industry practice, also sets out a requirement for account providers to protect their customers from fraud and financial harm. And this includes monitoring accounts to look out for activity that might suggest a customer was at risk of financial harm, intervening in unusual or out of character transactions and trying to prevent customers falling victims to scams.

Taking the above into consideration, I need to decide whether Chase acted fairly and reasonably in its dealings with Mr B, or whether it should have done more than it did.

It's not in dispute here that the payment for £15,000 was suspicious. Chase flagged it as such and asked Mr B to make contact to discuss it before it could be approved. And Chase had already done the same on a previous payment, for £8,124. So it's clear that Chase was already on notice that something suspicious might be going on, as it had flagged two payments in one day for further checks.

The question then is whether, when contact was made with Mr B, Chase did enough to find out what was going on and to ensure Mr B was protected from potential scams. And having looked carefully at what was discussed, I don't think Chase did do enough.

I acknowledge that, when asked what the £15,000 payment was for Mr B said he was moving funds to a savings account to pay bills, but while I wouldn't expect Chase to second guess every answer they are given in these kinds of discussions, I think that in the particular circumstances of this case it should have probed further. I say this because this was not a payment in isolation, Mr B had made two previous payments to the same beneficiary that same day. His payments had started with a small payment and then had increased. And when Chase had spoken to Mr B about the previous payment he had told it the payment was for an investment.

So the overall picture was concerning, and I don't think that it was therefore reasonable for Chase to take what Mr B said at face value without asking some more detailed questions or perhaps providing a detailed scam warning regarding investment scams. I acknowledge that

Chase did provide Mr B with a scam warning during the conversation, but that was very much geared towards safe account scams, and Chase should have been aware that Mr B might be at risk of falling victim to an investment scam given what he had told it about the previous payment he made.

Had Chase questioned Mr B more closely, then I think it is more likely than not that the scam would have been uncovered. Chase has said that Mr B 'lied' about the reason for the payment but that doesn't appear to have been an intentional attempt to deceive Chase or something he said at the request of the scammers. It doesn't seem that Mr B was given any cover story by the scammers. So I think if Chase had referred back to the payments Mr B had already made to the same beneficiary that day – and which it knew were for an investment – then Mr B would have been honest about what was happening and that would have rung alarm bells for Chase, given that these types of investment scam are becoming increasingly common. Chase could then have explained the risk Mr B was exposing himself to, and I consider it likely that the spell of the scam would have been broken and Mr B wouldn't have proceeded with the payment. I think it's also worth noting here that Chase has itself said that it should have done more to educate Mr B about investment scams when it discussed the £8,124 payment with him. It's arguable that if it had done so then the third payment may never have even been attempted.

I do, however, agree with our Investigator's finding that Mr B ought to have thought twice before investing such large sums of money with a firm that he knew little about. I agree that it appears Mr B did no real independent research of his own, and as noted earlier in this decision, there were issues with the way the scammers were operating that I think should have indicated to Mr B that he might not be dealing with a legitimate investment firm. For example, he was told he could make large profits in a short space of time and was told his capital was guaranteed. Both of these promises really should have been seen as too good to be true. So with this in mind, I think it's fair and reasonable for Mr B to bear responsibility for 50% of the loss.

I've also thought about whether Chase could have done more to recover the funds after Mr B reported the fraud. I do think Chase could have contacted the beneficiary more quickly, but given that these were payments to a cryptocurrency account, I don't think quicker reporting would have made any difference to the recovery of the funds.

So, in summary, I consider that Chase could have done more to protect Mr B from the risk of financial harm when it contacted him about the £15,000 payment. So I think it is reasonable for Chase to bear responsibility for that loss. I do though consider that Mr B also shares responsibility for his loss here. So I consider it fair and reasonable for Chase to refund 50% of that amount to Mr B (minus the £900 that he was able to recover from the account with T himself), along with interest at our standard compensatory rate of 8%.

Putting things right

To resolve this complaint Chase should:

- Refund 50% of the £14,100 outstanding loss

- Pay 8% simple interest per annum from the date of the payment to the date of settlement.

My final decision

I uphold this complaint. J.P. Morgan Europe Limited (trading as Chase) should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 4 January 2023.

Sophie Mitchell
Ombudsman