

## **The complaint**

Mr D complains that J.P. Morgan Europe Limited trading as Chase ('Chase') won't refund the money he lost after falling victim to a scam.

## **What happened**

In May 2023, Mr D was looking for a smart watch and found one on an online marketplace.

Mr D saw several pictures of the watch, checked the serial numbers in the picture against manufacturer's records, and asked if the box was sealed – the seller said it was.

When Mr D met the seller to buy the watch, he saw the box had been opened. The seller told him that another person had been interested in buying it and had opened the box to examine it. But that buyer offered less than the seller was asking, so the sale didn't go through.

Mr D says he checked the box and turned the watch on to make sure it was working. Satisfied with what he saw, Mr D transferred £500 to the bank details provided by the seller.

When Mr D got home, he turned the watch on and started using it, but realised the operating system didn't match with the genuine product. At this point, Mr D realised the watch was a replica.

Mr D raised a fraud claim with Chase, asking that they refund him.

Chase considered Mr D's fraud claim but declined to refund him. Chase said Mr D had the opportunity to check the watch before paying for it, and by paying for it, he had accepted the goods.

Mr D wasn't happy with Chase's response, so he brought a complaint to our service.

An investigator looked into Mr D's complaint and recommended that Chase refund him in full. The investigator referred to Chase's terms and conditions, saying they were satisfied that Mr D was entitled to a refund as he was the victim of fraud.

Chase disagreed with the investigator's opinion. Chase said the serial number on the box matched the manufacturer's website and Mr D had reviewed the item before making payment.

Chase asked for an ombudsman to review the case.

## **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.

In broad terms, the starting position in law is that Chase are expected to process payments that a customer authorises it to make, in accordance with the terms and conditions of the customer's account and the Payment Services Regulations (PSR's).

But, having reviewed Chase's terms and conditions, I agree with the investigator that Mr D is entitled to a full refund. I'll explain why.

The terms and conditions say:

*"You'll generally get a refund for a payment if you have any of the problems set out below, unless you've been fraudulent, in which case no refund will be provided...."*

*"...Either intended to send money to a particular person, but you were tricked into sending money to someone else; or sent money to someone for what you thought was a genuine purpose, but which was actually fraudulent."*

I've carefully reviewed the video sent to us by Mr D and I'm satisfied that the item he received wasn't a genuine product. The box does not match the genuine item and the icons on the watch screen are slightly different to the genuine item. Also, the box Mr D received says "designed by Watch in China", whereas the genuine box would say "designed in California".

I can't share the details of the information from the beneficiary bank, due to data protection laws. But they haven't provided any evidence that supports the seller providing a genuine item to Mr D.

Having carefully considered all the evidence, I'm satisfied that Mr D paid money to the seller for what he believed was a genuine purpose, a smart watch of a particular brand, but which was fraudulent as it was a replica.

I also think the checks that Mr D did before paying the seller were reasonable.

Mr D checked the serial number on the box matched the manufacturer's website, unfortunately they had cloned the manufacturer information on the box. Also, Mr D turned the watch on to check that it was working.

It wasn't immediately obvious that the item was a replica, and I'm aware that Mr D hadn't owned this brand of smart watch before. It required comparing videos to identify the differences and I'm not satisfied that someone who hasn't owned this brand of watch would've easily identified the differences when doing the basic checks Mr D did before paying for the item.

In these circumstances, I'm satisfied that Mr D did sufficient checks to reasonably believe the watch was genuine prior to making his payment. However, the item he received wasn't genuine and Mr D was the victim of fraud.

On that basis, I'm satisfied that Chase should fully refund Mr D and pay 8% simple interest on that refund, calculated from the date Chase declined his fraud claim.

### **Putting things right**

To put things right, I require J.P. Morgan Europe Limited trading as Chase to:

- Refund Mr D in full

- Pay 8% simple interest per year on that refund, calculated from the date Chase declined Mr D's fraud claim until the date of settlement.\*

\*If Chase considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr D how much it's taken off. It should also give Mr D a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

My final decision is that I uphold this complaint against J.P. Morgan Europe Limited trading as Chase and require them to compensate Mr D, as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 December 2024.

Lisa Lowe  
**Ombudsman**