DRN-3130864

The complaint

Miss L is unhappy that Monzo Bank Ltd won't refund money she lost to a scam.

Miss L is represented in this complaint by a legal guardian.

What happened

Miss L was on a social media platform looking to buy a pair of trainers – considered to be luxury items because of their limited availability. She contacted the seller about them. In order to order them she needed to provide details about herself (address for delivery etc) and proof of sending the payment; bank account details were provided by the seller for payment to be sent to.

Miss L tells us she never actually completed the order but noticed the following day (8 January 2021) that the money - £160 - had been taken from her account. She contacted Monzo on 12 January 2021 to report the scam as the ordered goods hadn't arrived and when she had tried going back to the seller she had been blocked from the site.

Monzo didn't refund Miss L and when responding to her complaint explained it didn't think she had taken sufficient steps to check who she was paying, and for what, before the payment was made.

Our investigator upheld the complaint. She said that, under the Lending Standards Board's Contingent Reimbursement Model (CRM), Monzo should reimburse customers who are victims of authorised push payment scams except in limited circumstances; and she didn't think those circumstances applied here. (Although not a signatory of the CRM, Monzo has agreed to adhere to it).

The investigator upheld the complaint as she was satisfied that Miss L had a reasonable basis for belief in placing the order and making payment. In making this finding, the investigator noted Miss L was a minor at the time.

Monzo has asked for the matter to be referred to an ombudsman. In summary, it says:

- The information it has provided from a different reseller, shows these trainers sell for between £220-£250 and so it considers the price here of £160 to be too good to be true. And that as the trainers are sold from abroad, import duty, vat and shipping would have added considerably to their cost.
- It doesn't consider Miss L's age to be a relevant consideration – the test is reasonable basis which it considers to mean a claim should be assessed as to what a reasonable person would think. It also says the CRM makes no reference to a reasonable basis for belief being different on a person by person basis and it's a general condition. If the argument is the age of the customer affected their ability to view this as a scam, then it's a different section that would be applicable in relation to vulnerability. But its satisfied Miss L had capacity to protect herself.

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 is that a payment services provider is expected to process payments that its customer authorises, in accordance with the Payment Services Regulations 2017 (PSRs), which apply to this complaint, and account terms and conditions. But where a customer made a payment as a result of the actions of a scammer, it may sometimes be fair and reasonable for a payment services provider to reimburse its customer, even though the payment was authorised.

Miss L has maintained throughout that she didn't authorise any payments to the seller, the money was taken from her account. But she hasn't provided any persuasive explanation for how the scammer might have her account details; or had access to her account in order to make payment. I've also noted that both in a call to Monzo and in the online chat with it, she says she had placed an order (that hadn't arrived). And the social media instructions from the seller – which Miss L has provided a copy of – say an order is placed once payment confirmation is sent. As Miss L has referred on more than occasion to her order not arriving, I'm satisfied on balance that she did authorise the £160 payment to the seller.

Monzo accepts that Miss L has been the victim of an authorised push payment scam. I have taken account of whether Monzo ought to have reimbursed Miss L under the provisions of the CRM, and whether it ought to have done more to protect her from potential financial harm from fraud. The CRM also places a level of care on customers such as Miss L, so I have considered whether she met this.

The CRM

The CRM requires payment service providers to reimburse customers who have been the victims of authorised push payment (APP) scams like this, in all but limited circumstances. It is for Monzo to establish that a customer has failed to meet a requisite level of care under one or more of the listed exceptions set out in the CRM.

Those exceptions are:

- The customer ignored an effective warning in relation to the payment being made.
- The customer made the payment without a reasonable basis for believing that:
    - the payee was the person the customer was expecting to pay;
    - the payment was for genuine goods or services; and/or
    - the person or business with whom they transacted was legitimate

There are further exceptions within the CRM, but these aren't applicable here.

Monzo has explained that it isn't relying on whether it provided an effective warning to Miss L in deciding not to reimburse her. Rather it doesn't believe Miss L had a reasonable basis for belief.

Under the CRM Monzo can choose not to reimburse Miss L if it doesn't believe that she took the requisite level of care to ensure she had a reasonable basis for belief that the person/business she was paying was legitimate and for genuine goods or services. It isn't enough for Miss L to believe she was paying a legitimate person/business for genuine goods or services, she had to have a *reasonable* basis for belief.

Monzo has sought to argue that Miss L didn't have a reasonable basis for belief, largely because it believes the price of the goods were too good to be true. In making that argument, it has provided information from a resale website to show the trainers in question were usually sold on the secondary market for between £220-£250. It has also made the argument that various taxes, duties and shipping costs would also need to be added into the cost.

I have considered its argument carefully. But I don't find it persuasive. Having carried out my own research into the scammer's social media site, I understand it – and they - were based in the UK. Whereas the arguments Monzo makes about taxes, vat etc, rely on the sale being conducted abroad, through the particular website it has used to support its argument. But I haven't seen any persuasive evidence that Miss L was making her purchase through that particular website, or anywhere else abroad, such that those additional costs would be a relevant factor.

I do agree that £160 is lower than the amount those trainers might typically sell for. But this is only a difference of £60-£90. I'm not persuaded this of itself indicates the deal is 'too good to be true' as Monzo argues. I'm mindful this is a secondary market very much dependent on what a customer is willing to pay, or the original owner willing to sell for. I don't consider the difference so great such that it ought to have aroused suspicions or concerns.

I have considered that Miss L made the payment to an individual rather than a business. But I don't think that is unusual, particularly online. Many sales conducted through online market places involve payments to individuals and that can be particularly so if a trader is, say, self-employed, or doing it for a hobby. The site itself had over 20,000 followers and I'm given to understand that included celebrities. And I think that would have led to an air of legitimacy that Miss L was dealing with a legitimate seller.

Our investigator has referred to the age of Miss L when making this purchase but Monzo doesn't believe that to be a relevant factor, it argues the reasonable basis for belief is a general condition which it has taken to mean a claim is to be assessed as to what a reasonable person would think. It also says the CRM makes no reference to a reasonable basis for belief being different on a person by person basis.

At R2(1)(C) the CRM says:

> In all the circumstances at the time of the payment, *in particular the characteristics of the Customer* and the complexity and sophistication of the APP scam, the Customer made the payment without a reasonable basis for believing that: ….[my emphasis]

I'm therefore not persuaded by Monzo's arguments about what a reasonable person would think or that the CRM makes no reference to it being on a person by person basis - the CRM explicitly sets out the particular characteristics of the Customer are part of the circumstances relevant to whether there was a reasonable basis for belief.

Overall, I'm not persuaded Monzo has established Miss L didn't have a reasonable basis for belief that she was paying a legitimate person/business for genuine goods or services. It follows that I'm not persuaded the exception for reasonable basis for belief applies to Miss L's payment such that Monzo can choose not to reimburse her.

My final decision

For the reasons given, my final decision is that I uphold this complaint. I require Monzo Bank Ltd to:

- reimburse £160 to Miss L (less any funds since recovered); and

- it should add 8% simple interest per annum from the date it declined to reimburse

Miss L to the date of settlement (less any tax lawfully deductible).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 21 December 2021.

Claire Hopkins
Ombudsman