DRN-3149338

The complaint

Miss M complains that Monzo Bank Ltd won't refund the money she lost, after she fell victim to a scam.

What happened

The background to this complaint is well known to both parties, so I won't repeat it in detail here. But in summary, in July 2021, Miss M was looking to purchase some luxury designer goods and was interested in a bag and a pair of trainers that she had seen advertised on a social media platform.

Miss M has shared a copy of the advert, which shows the trainers priced at £280 and the bag priced at £340. On 26 July 2021, Miss M messaged the seller to ask if they would be able to do a deal on the items. The seller responded saying that the trainers would be £290 and the bag £340, but if Miss M wanted both items, they would accept £480.

Miss M responded to the seller and asked if the items were definitely real and whether they came with proof they were genuine. The seller explained that they got their stock discounted from their supplier, without any VAT. They went on to say all items are 100% authentic and the items are shipped with the receipts, so Miss M would be able to see where the items were purchased from.

Miss M told the seller that she would take both items for £480. The seller asked Miss M whether she was ready to pay, but Miss M responded saying that she was worried that 'it's not legit' The seller reassured Miss M that all payments are fully protected. On Miss M asking how she could pay, the seller provided bank account details for where the payment should be made to.

Before making the payment Miss M asked the seller if there is anyway they could show they were genuine. The seller responded saying as soon as Miss M pays, she would have full authenticity receipts sent to her. The seller added that the payment wouldn't be in their account until Miss M had received the goods and they could prove they'd been received and that she had nothing to worry about. The seller also made the offer, if it made Miss M feel safer, of accepting an initial payment of £380, with the remaining balance, of £100, to be paid once Miss M had received the items.

Miss M responded to the seller explaining it would (make her feel safer), as she said she was worried. This was because she said she had bought something before, which turned out not to be genuine and she couldn't get her money back. The seller replied to Miss M explaining that she had nothing to worry about and also sent Miss M an image of a driver's licence, as ID saying they were 100% genuine. The seller asked Miss M to confirm as soon as possible if she wanted to buy the items, they said they had somebody else interested in the bag, and it was the last one. Believing everything to be genuine Miss M went ahead and made a payment for £380 through her mobile banking app.

Shortly after she had sent this payment, the seller contacted her again saying they were about to ship the items, but they had been told by their sales manager they couldn't do so, without the full payment. So they asked Miss M to send over the remaining £100. Miss M went ahead and made the further payment for £100.

When Miss M didn't receive the confirmation email she was expecting, she tried to contact the seller, only to find that she had been blocked. Unknown to her at the time she had been dealing with a scammer.

Miss M raised the matter with Monzo and it contacted the receiving bank, but it was unable to recover any of the money Miss M had sent. Unhappy with this Miss M complained to Monzo.

Monzo is not a signatory of the Lending Standards Board's Contingent Reimbursement Model (the CRM Code) but has agreed to adhere to it. This means Monzo has made a commitment to reimburse customers who are victims of authorised push payment scams except in limited circumstances. Monzo considered Miss M 's complaint under the CRM Code and issued its final response on 19 August 2021, not upholding her complaint in respect of the money she had lost. In summary, it said Miss M didn't take enough steps to check who or what she was paying for. It did however acknowledge the wait times Miss M had experienced when raising the matter, and as a gesture of apology credited Miss M's account with a total of £45.

Miss M didn't agree with Monzo's findings and so brought her complaint to our service. In summary, she said that the seller had over 170,000 followers and she said she had carried out some checks, when she expressed some concerns about purchasing this way. She said she was reassured when the seller sent her a copy of a driver's licence as ID. She thinks Monzo could have done more to help her.

Unhappy with Monzo's response, Miss M bought her complaint to our service. One of our investigator's looked into things but didn't think the complaint should be upheld. In summary, she said this because she didn't consider Miss M had met her requisite level of care under the CRM code when making the payments. She didn't think Miss M had a reasonable basis for believing the payments were for genuine items or that the person she transacted with was legitimate. Our investigator thought the price of the items seemed too good to be true and that should have led her to being more cautious, she said this especially as Miss M had unfortunately been in the position before, where she had purchased goods that didn't turn out to be genuine.

Miss M didn't agree with our investigators view. In summary, she said that she was reassured that this wasn't a scam and the goods were advertised at discounted prices. She added that the prices our investigator had indicated the items would cost, were what you would pay in a retail store, not an online outlet. She added that she thinks Monzo wasted time in trying to get her money back, after she had raised the matter with it.

As agreement couldn't be reached the complaint has now 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.

I'm sorry to hear of what's happened to Miss M, and I can understand entirely why she feels so strongly that this money should be returned to her. But having thought very carefully about Monzo's actions, I think it did act fairly and reasonably in allowing the transfers to leave Miss M 's account. I also don't think it could have done any more to try and recover the money she sadly lost. So, while I know it will be disappointing for Miss M, having considered everything I'm not upholding her complaint.

In deciding what's fair and reasonable in all the circumstances of a complaint, I'm required to take into account relevant: law and regulations; regulators' rules, guidance and standards; codes of practice; and, where appropriate, what I consider to be good industry practice at the time.

In broad terms, the starting position at law is that a firm is expected to process payments and withdrawals that a customer authorises, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

However, where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the bank to reimburse the consumer even though they authorised the payment. When thinking about what is fair and reasonable in this case, I've considered whether Monzo should have reimbursed Miss M in line with the provisions of the CRM Code it has agreed to adhere to, and whether it ought to have done more to protect Miss M from the possibility of financial harm from fraud.

The circumstances where a firm may not choose to reimburse are limited and it is for the firm to establish that a customer failed to meet their requisite level of care, as set out in the Code. One such circumstance might be when it can be demonstrated that the customer made the payments without having a reasonable basis for believing that:

- the payment was for genuine goods or services; and/or
- the person or business with whom they transacted was legitimate

*Further exceptions outlined in the CRM Code do not apply to this case.

Monzo has argued that Miss M didn't have a reasonable basis for believing the payment she was making was for genuine goods or services.

I've thought carefully about whether exception(s) to reimbursement applies in Miss M's case. And, on balance, I don't think she has made the payments whilst having a reasonable basis for belief that all was genuine. I'll explain why.

The price of the items being advertised, seemed to be well below what the market value appears to be for the luxury brand of bag and trainers Miss M was intending to buy. And I can see that the fraudster agreed to a further discount, even against the seemingly already very low advertised price. From what I've seen the market value, for both items, would conservatively still be somewhere over £2,000. I don't doubt the offer would have appeared enticing, considering how cheap the items were being advertised at (and then further discounted), in comparison to what one might typically have expected to pay for them, but price can be one indicator that there is potentially something untoward about the seller or the proposed deal. And here, where the items are being discounted by in the region of 75%, I think this ought to have given cause for Miss M to have questioned in her own mind, whether this was too good to be true.

And from seeing the exchange of messages Miss M had with the fraudster, I think it's clear she did have concerns. From the outset I can see that she has asked the seller whether the items were genuine, if she could have proof of their authenticity and expressed that she was worried that things might not be legitimate.

I'm not persuaded the responses the seller gave Miss M, when she raised her concerns, were such that they should have reasonably reassured Miss M that things were genuine.

And I'm mindful that there were other factors, in the particular circumstances of this case, that ought to have caused Miss M to reasonably have had some doubts about what was being offered. I say this as;

- the fraudster told Miss M that she would receive confirmation of the authenticity of the items, but it seems this would only be provided after the payment was made. Whereas I think a legitimate seller is much more likely to have been able to provide evidence of authenticity ahead of any payment being made.

- I also don't think it's typical for a legitimate seller to agree to accepting partial payment, with the remainder on delivery – and I note the seller than reneged on this as soon as Miss M had made her initial payment.

- Miss M was told that the payments were guaranteed and that the payment wouldn't be with the seller, until Miss M had received the items. But I can't see that there has been any plausible explanation for how the payments were going to be protected. Nor how the payment wouldn't reach the sellers account until the items were received – when Miss M was making a faster payment through her mobile banking app, that would typically reach the recipients account almost immediately.

Given the concerns that Miss M clearly had about the legitimacy of the items, I think she ought fairly and reasonably to have proceeded with more caution and not taken at face value what she was being told, without seeking further clarity.

I've thought carefully about what Miss M has said, that the fraudster sent her a copy of a driver's licence and that they had over 170,000 followers. However, when I consider everything in the round, in the circumstances of this case, I'm not persuaded Miss M should have accepted that things were as they were being presented to her. I think it's reasonable to have expected Miss M to question the plausibility of what was being offered, especially given that Miss M has said she had unfortunately paid for items previously, that had not turned out to be genuine.

Weighing it all up, I think it more likely than not it would have been evident to Miss M that there was a considerable degree of risk associated with the purchases she was considering, which I'm persuaded is supported within the messages she exchanged with the fraudster.

In the circumstances, I don't consider Miss M had a reasonable basis for believing she was buying genuine items and/or the seller of them was legitimate. All things considered, I don't think Miss M had a reasonable basis for believing the payment she was making was for genuine goods or services and I'm persuaded this was sufficient reason for Monzo to fairly decline to reimburse her under the CRM Code.

Is there any other reason Monzo ought to refund Miss M?

I've thought about whether Monzo did enough to protect Miss M from financial harm. The CRM Code says that where firms identify APP scam risks, they should provide effective warnings to their customers. The CRM Code also says that the assessment of whether a firm has met a standard or not should involve consideration of whether compliance with that standard would have had a material effect on preventing the scam.

I am also mindful that when Miss M made this payment, Monzo should fairly and reasonably have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things).

Having considered this, I'm not persuaded the payments Miss M made to the fraudsters were so remarkable that Monzo ought fairly and reasonably to have believed there was a scam risk. And so, I don't believe Monzo needed to do more than it did, in terms of providing warnings about making payments.

Finally, I've considered whether Monzo did all it could to try and recover the money Miss M lost, once she had reported the scam to it. From the evidence I've seen, Monzo did contact the receiving bank when Miss M raised the matter with it, but unfortunately it hasn't been able to recover any funds. But I'm satisfied it did what I would have expected of it in attempting to recover the money Miss M had lost.

I am sorry that Miss M has lost this money to what is a cruel scam, and I understand the whole experience will have been very frustrating and upsetting for her. But in the circumstances, for the reasons explained, it wouldn't be fair or reasonable for me to order Monzo to repay her the money she has sadly lost.

My final decision

My final decision is that I don't uphold this complaint against Monzo Bank Ltd.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 11 March 2022.

Stephen Wise
Ombudsman