

The complaint

Miss P is unhappy that Monzo Bank Ltd will not refund the money she lost after paying for an item she did not receive.

What happened

Miss P wanted to buy a leather cardholder made by a luxury fashion brand. She found a profile on Instagram which presented itself as a clothing store offering an exclusive personal shopping service. It claimed to be based in the UK and offering authentic designer clothing. The profile explained that users should send a direct message to place an order.

Miss P sent a direct message with a screenshot from a luxury goods website showing the cardholder she wanted. The retail price of the cardholder was £265. Miss P asked the clothing store if it would be able to source that particular item at a discounted price.

The seller replied that it could. It gave a price of £160 plus postage. Miss P asked if the item came with the authentication paperwork from the brand and the seller said it did. Miss P asked how to place the order. The seller responded to say that it would send her bank details and then an order confirmation would be emailed to her after she'd made the payment.

Miss P transferred £166.50 from her Monzo account to the Monzo bank details provided by the seller. She sent a screenshot to confirm she'd paid and the seller responded to say the order would be processed. When Miss P didn't receive a confirmation email, she chased the seller up. The seller never responded. The bank details she'd paid disappeared from her Monzo app.

Miss P thought something was wrong and contacted Monzo for help. She explained that she was buying a cardholder from an Instagram business profile and it had looked authentic because the account was very active and had over 29,000 followers as well as positive reviews from celebrities.

As Monzo was also the receiving bank, it acted quickly to see if it could recover any of the funds. But the money Miss P had sent no longer remained. Monzo went on to consider whether it should refund Miss P for her loss. But it turned down her claim for a refund and said she didn't take enough steps to check who she was paying and what for. When Miss P complained, Monzo said it had acted in line with its internal procedures and regulatory guidelines.

Miss P brought her complaint to our service as she wasn't happy with the bank's decision.

One of our Investigators looked into the complaint and recommended it be upheld. He noted that 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. Our Investigator didn't think any of those circumstances applied here.

He said Monzo had not been able to establish that Miss P did not have a reasonable basis for believing that the payee was the person she was expecting to pay, the payment was for genuine goods and/or that the person she was transacting with was legitimate. In reaching that position, he placed weight on Instagram as a recognised selling platform. He pointed out that this Instagram account had many followers and positive reviews. He thought the way the seller presented its information, such as the terms and conditions of sale being fully shown, would have been reassuring. He felt the reviews that were incorporated into the account tied in with what could be expected when selling discounted designer goods. He thought Monzo should have fully reimbursed Miss P's loss.

Monzo disagreed. It said legitimate businesses use Instagram as a platform to link through to official ecommerce websites so felt the operation of this business should have raised concern. It pointed out that reviews that claimed the seller was a scam had been posted 11 weeks before Miss P made the payment and said that Instagram followers can easily be bought to present a false online presence. It thought Miss P should have done more due diligence. It thought she should have questioned why a seemingly large business would be accepting funds into a personal bank account. It thought the discount that was being offered on a brand new, designer item was infeasible and this should have prompted Miss P to question why the seller was able to offer such a wide variety of designer items at such a reduced cost.

Our Investigator wasn't minded to change his view of the complaint. He asked Miss P for her comments. She said there were thousands of businesses that solely use Instagram as their main page and referred to transactions she had successfully made in the past when purchasing cakes and balloons. She pointed out the Instagram page included pictures showing a high volume of packages ready for dispatch along with postage and tracking details for those items. She pointed to trading platforms where it is possible to buy designer items for discounted prices to support the legitimacy of the deal. She concluded by saying other banks had refunded people that had been scammed by this page in the exact same way that she had been taken in.

Monzo did not agree. It maintained the view that Miss P did not have a reasonable basis for belief when making this payment. It thought she had sent the payment to an unknown individual online without proper basis for trusting them. It thought some of the places Miss P had highlighted designer goods being available at discounted prices such as auction websites and resale websites were not real opportunities either. It thought Miss P should have done wider due diligence and felt it had no obligation to refund the loss when correctly applying the CRM Code.

As no agreement could be reached, the complaint has been referred to me.

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 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 P 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 P from the possibility of financial harm from fraud.

There's no dispute here that Miss P was tricked into making the payment. She thought she would receive a designer cardholder in exchange for her money and the seller did not keep to their side of that bargain. But this isn't enough, in and of itself, for Miss P to receive a refund of the money under the CRM Code. The Code also places a level of care on Miss P.

The CRM Code

Monzo has agreed to adhere to the provisions of the Lending Standards Board Contingent Reimbursement Model (the CRM Code) which requires firms to reimburse customers who have been the victims of Authorised Push Payment (APP) scams like this, in all but a limited number of circumstances.

It is for Monzo to establish that a customer failed to meet a requisite level of care under one or more of the listed exceptions set out in the CRM Code. Monzo has explained its key concern in this case is whether Miss P made the payment without a reasonable basis for believing that the payee was the person she was expecting to pay; the payment was for genuine goods or services; and/or the person or business with whom she transacted was legitimate. There are further exceptions within the CRM Code, but they do not apply in this case.

Taking into account all of the circumstances of this case, including the characteristics of the customer and the complexity of the scam, I am not persuaded the concerns Monzo has raised about the legitimacy of the transaction Miss P was making are enough to support its position that she failed to meet her requisite level of care under the CRM Code for the payment she made. It follows that I do not think Monzo has been able to establish that it may choose not to reimburse Miss P under the terms of the CRM Code.

Having thought about what both sides have said and provided, I consider Miss P had a reasonable basis for believing the payment she was making was for genuine goods and that the person she was transacting with was legitimate. In reaching that conclusion, I have thought carefully about what it is realistic to have expected Miss P to do when she was looking to spend a total of £166.50 online.

The screenshots provided show how the Instagram account would have most likely appeared at the time of the sale. The set-up of the seller's profile is professional. It has close up pictures of designer goods, along with a dedicated section for reviews. It posts onto Instagram regularly and with content that gives the impression that it has a large number of satisfied customers and is making a considerable volume of daily sales. In addition to this, it has a high number of followers. Miss P has explained that she saw celebrity endorsements for products amongst the reviews. The profile also contains sections explaining the terms and conditions of sale, including a returns policy, along with frequently asked questions.

Having looked at this information, I don't think there was anything obviously untoward about the seller. I think all of this information when taken together would have lulled Miss P into a false sense of security at the time she made the payment. I don't think it was unreasonable for her to have thought she was dealing with a well-established seller that had made many successful transactions. From what Miss P recalls that she saw, she had no reason to think the seller would not keep to their side of the bargain on this occasion.

I've thought about the price Miss P paid thinking she was purchasing a small leather item from a luxury fashion house. Monzo feels a discount of 42% on a brand new, designer item was not feasible and if the seller was able to offer such a wide variety of items from a number of brands at such reduced costs, Miss P should have reflected on whether this was too good to be true. It's clear Miss P knew what the recommended retail price for the item should be based on the screenshot she initially sent to the seller. But I don't think the price the seller gave was such that Miss P ought to have questioned it more in her own mind when viewed in the context of the overall situation she found herself in. People can and do find good deals online. Miss B explains that she saw the positive reviews left by other customers, including photographs of them with the items. She felt the large following gave the seller credibility and that the pictures of the postage and tracking information uploaded by the seller confirmed they genuinely had these items to sell.

Even though Monzo has highlighted there was more Miss P could have done to assure herself that she could trust the seller, I am not persuaded Miss P needed to make such extensive enquiries in the particular circumstances of this case. I've thought carefully about the price of the item Miss P wanted to buy and how the seller's operation was presented on Instagram. Whilst the situation is finely balanced, I think Miss P's actions and assessment of the situation was appropriate and proportionate to an unremarkable payment of £166.50.

Weighing it all up, I don't think it would have been evident to Miss P that there was a considerable degree of risk associated with this purchase. She's explained that she did not think someone would go to such an extent to create a fake profile so I am persuaded it did not occur to her that there was a possibility she wouldn't receive the item or that it might not be genuine. Fraudsters are masterful at building and trust and confidence and it is not realistic to expect Miss P to have the same awareness of what scams like this can look and feel like as the bank does.

I think Miss P took enough care with a relatively modest purchase of £166.50 to say that she had a reasonable basis for believing she was buying genuine goods from a legitimate seller. I don't believe she took a calculated chance by going ahead with the purchase in the circumstances she did.

Overall, I don't think Miss P's actions fell below the level of care expected of her in this situation. I think Monzo ought to have fully refunded Miss P at the time she reported the loss and so it should fairly and reasonably compensate Miss P by refunding that loss now.

Putting things right

The Code explains that where a customer has met their requisite level of care (which as I've explained, I'm satisfied was the case here) they should be refunded all of the money that was lost.

So I think it's fair that Monzo refunds the £166.50 Miss P lost, along with 8% simple interest from the date Monzo declined her claim until the date the funds are returned.

My final decision

For the reasons given above, I uphold this complaint and direct Monzo Bank Ltd to pay the settlement as I've outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 3 March 2022.

Claire Marsh
Ombudsman