

The complaint

Miss G complains Kroo Bank Ltd (“Kroo”) won’t refund payments she made after falling victim to a scam.

What happened

Miss G was in her initial week with her employer, and she received an email from someone claiming to be her manager. The individual said they needed her to complete a discreet errand which involved buying gift cards that they intended to give to staff members. She said she was aware her manager was overseas at the time and as she was eager to contribute, she agreed to help. She visited a retail store I’ll refer to as “T” on 7 November 2023 and purchased nine individual £200 gift cards with her Kroo bank card. She was instructed by this individual to take photos and share over the details of the gift cards and their value so they could arrange sending them with personal messages.

Miss G said she came to realise she’d been scammed when communication with this individual stopped, and after she called her manager who confirmed they hadn’t emailed her. She then raised a fraud claim with Kroo, but it didn’t agree to refund her.

Miss G raised a complaint and Kroo issued its final response letter on 4 March 2024 setting out it didn’t consider it acted unfairly. Unhappy with its decision, Miss G referred her complaint to our Service.

One of our investigators looked into Miss G’s complaint and partially upheld it. They considered Kroo should have intervened on the fourth payment made, and if it had it could have prevented Miss G’s losses from that time. They also said Miss G hadn’t contributed to her loss.

Miss G and Kroo didn’t agree. Miss G said she believes Kroo had a responsibility to its customers to act promptly to protect them from financial harm.

Kroo said it believes Miss G should be held liable as she had the means to contact her manager and didn’t carry out further checks until after she’d spent her money. It added that between two of the payments there was a cooling off period and the gift cards warned against sharing the codes. It also made mention to previous decisions our Service had reached involving similar cases to Miss G’s case, and that the loss amount reported was within the bank’s authorised payments threshold.

As neither party agreed, the matter has been passed to me to decide.

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 uphold this complaint. I’ll explain why.

In deciding what's fair and reasonable, I am required to take into account relevant law and regulations, regulators' rules, guidance and standards, and codes of practice; and, where appropriate, I must also take into account what I consider to have been good industry practice at the time.

It isn't disputed here that Miss G made these payments after falling victim to a scam. In broad terms, the starting position at law is that a bank is expected to process payments and withdrawals that a customer authorises it to make, in accordance with the Payment Services Regulations (in this case the 2017 regulations) and the terms and conditions of the customer's account. So she's presumed liable at the first point for payments she's authorised.

Overall, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable that Kroo should:

- Have been monitoring accounts and any payments made or received to counter various risks, including preventing fraud and scams.
- 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). This is particularly so given the increase in sophisticated fraud and scams in recent years, which firms are generally more familiar with than the average customer.
- Have acted to avoid causing foreseeable harm to customers, for example by maintaining adequate systems to detect and prevent scams and by ensuring all aspects of its products, including the contractual terms, enabled it to do so.
- In some circumstances, irrespective of the payment channel used, have taken additional steps, or make additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

Should Kroo have prevented Miss G's loss?

Kroo doesn't appear to have intervened on any payments Miss G made, and I think it was fair it didn't intervene on the first three payments. Having reviewed Miss G's account history prior to the scam, there were times she often made multiple payments in a single day, to the same retailer, though for differing amounts. It was common for Miss G at times to use her account frequently, though in some months she didn't as much or at all. Overall I don't consider by that stage it ought to have warranted concern.

However by the fourth payment, I think Kroo ought to have stepped in. I consider there was a pattern of behaviour developing that suggested something untoward might be happening. The initial four payments were made within two minutes which were of the same value, to the same merchant, and suggested an attempt to progressively clear funds in Miss G's account.

Kroo argues the amounts involved in the scam here were within its authorised payment threshold. Specifically it referred to a £10,000 limit for card transaction in a single calendar day, suggesting that's why it didn't have cause for concern. However good industry practice sets out several different parameters for payment service providers, like Kroo, to look out for when transaction monitoring. So I would consider it fair for Kroo to be alert to other patterns of fraud, such as what was unfolding with Miss G's account. Although the value of spend by then was under the threshold Kroo mentions, given what I've set out above I'm persuaded there was enough going on that Kroo ought to have stepped in by payment four.

I'm satisfied that had Kroo discussed what was happening with Miss G, to ascertain what the payment was for and why she was making it, the scam would have unfolded. And it's more likely than not that this in turn would have prevented Miss G from making further payments. I say this because Miss G would have explained what was happening, that she had received an email from her manager asking her to buy gift cards and to share the full details. A type of scam Kroo ought to have been aware of. And I've seen nothing to suggest Miss G would have been dishonest in her interaction with Kroo.

Had Kroo warned Miss G about scams similar to the scenario unfolding, I'm satisfied she wouldn't have proceeded. I consider it likely she would have called her manager, like she did once the email communication stopped, and the scam would have been revealed.

Did Miss G's actions contribute to her loss?

Whilst I do think Kroo failed to take sufficient steps to protect Miss G, I also need to consider her own actions and whether she should bear some responsibility for her losses. In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

Miss G said she'd recently started employment at the time of the scam and was in her first week, and the emails she received matched the name of her manager. But she only saw the name because of the way the email appeared, and not the full email address at the time.

Kroo argues that Miss G had the means to contact her manager, which appears to be in reference to when Miss G eventually called her manager after the scam happened. I can see from the emails Miss G has shared with us that it shows just the name, and not the email address. So I appreciate why she didn't have any concerns in responding to the emails and following the instructions she thought she was receiving, and why she had no reason to believe she wasn't speaking to her manager at the time. It also seems she was led to believe that because it was a surprise, it wasn't something she could discuss with other colleagues. So I appreciate why she didn't think to discuss the request with anyone beyond her manager. I don't think she was negligent in not carrying out further checks.

Kroo also argues that between two payments there was a cooling off period and the gift cards warned against sharing the codes. Where Kroo explains of a cooling off period, I take this to mean a gap in the payments being made. Miss G has explained that when she was in T, she was told there was a limit to how many gift cards she could buy. Because of that she had to discuss what she was doing with someone senior at T before she could continue as there had been cases of fraud before involving gift cards. Though she added that they didn't explain specifically the types of fraud. And after explaining why she was buying the gift cards, she was allowed to proceed, which appears to explain why there was a short gap between two of the payments (payments five and six). I appreciate why that wouldn't have given Miss G cause for concern.

I also don't think it was negligent of Miss G not to have acknowledged the warning around sharing the codes on the gift cards. The warning itself didn't detail the consequence of sharing them. But given she thought her manager was intending on providing these to other staff members, I can appreciate why she didn't identify a concern as the codes would have been needed for its use.

Kroo also referred to previous decisions our Service has reached involving similar cases to Miss G's case. But as Kroo should know, each case our Service considers is done so on its own merits. Whilst I note the content of the decisions its shared, it has no bearings on the circumstances that apply to this specific case and the decision I've reached here.

Taking the above into account, I don't consider that it would be fair to make a deduction in the circumstances. T also confirmed that all gift cards had been redeemed. Kroo should therefore refund Miss G's losses in full from, and including, the fourth payment. Along with a refund of these payments, it should also pay interest to compensate Miss G for the time she's been without her money.

Could Kroo have recovered Miss G's loss?

Given the payment method involved here, a recovery option that would have been available to Kroo would have been through the chargeback scheme. This is a scheme run by the card scheme provider to resolve payment disputes between customers and merchants – subject to the rules they set. The scheme is voluntary and limited in scope.

It doesn't appear Kroo raised a chargeback however given the circumstances and what Miss G has explained, T likely provided the expected goods/service by providing the gift cards and its value in exchange for the payments she made. I therefore think it was reasonable Kroo didn't try to charge back these card payments as I don't think the claim would have succeeded.

My final decision

For the reasons I've explained, my final decision is Kroo Bank Ltd should:

- Refund Miss G from, and including, the fourth payment, less any funds since refunded or recovered.
- Pay 8% simple interest per year on this amount from the date of loss to the date of settlement (if Kroo Bank Ltd considers that it is required by HM Revenue & Customs to withhold income tax from that interest it should tell Miss G how much it's taken off. It should also give Miss G a tax deduction certificate if she asks for one so she can reclaim the tax from HM Revenue & Customs if appropriate).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 6 March 2025.

Timothy Doe
Ombudsman