

## **The complaint**

Mr M complains Kroo Bank Ltd (“Kroo”) restricted and closed his account despite providing the information it wanted as proof of entitlement to it. Mr M also complains Kroo applied an adverse fraud marker against him.

Mr M says Kroo’s actions have caused him significant distress and inconvenience – and led to his other accounts being closed and new applications being declined. Mr M adds this matter has caused him embarrassment with his employer.

## **What happened**

The details of this complaint are well known by both parties, so I won’t repeat them again here in detail. Instead, I’ll focus on setting out some of the key facts and on giving my reasons for my decision.

In December 2023, after receiving an external report Mr M’s account was reviewed by Kroo. Mr M was also asked in December 2023 for what purpose he used his Kroo account, and about several payments he’d received from third parties. Mr M explained they related to crypto currency trades. Mr M said he didn’t know his account couldn’t be used for that purpose as he thought crypto trading was legal in the UK.

Subsequently, Kroo restricted Mr M’s account and asked him in January 2024 for information to show his entitlement to a payment he had received from a third-party. Mr M sent Kroo screenshots he believed showed entitlement to that payment.

In February 2024, Kroo decided to close Mr M’s account with immediate effect. In March 2024, Kroo applied a ‘Misuse of facility’ CIFAS (Credit Industry Fraud Avoidance System) marker against Mr M.

Mr M says he only found out about this when his current account provider withdrew their services, and his applications for external accounts were being declined. Mr M also explained that another bank – who I will refer to as Bank T – had erroneously applied a CIFAS marker against him around this time. Mr M says he complained about this, and Bank T later apologised for its error, removed the marker, and paid him £300 compensation for the distress and inconvenience caused.

Unhappy with Kroo’s actions, Mr M complained. Kroo didn’t uphold Mr M’s complaint. In summary, it said:

- In July 2024, Mr M contacted Kroo about the CIFAS marker, and said he was the victim of identity theft and fraudulent accounts had been opened in his name. Mr M asked also for the CIFAS marker to be removed
- As Mr M has received his complaint response letter, he can complain directly to CIFAS who will conduct an independent review
- Kroo closed Mr M’s account in line with the terms and conditions of account

Mr M referred his complaint to this service. One of our Investigator looked into it, and they recommended it was upheld. In summary, they made the following key findings:

- In its in-app chat, Kroo warned Mr M his account could close if he continues to deal with crypto currency through it. Mr M challenged this, and Kroo directed him to its terms and conditions. Kroo could've been clearer here and signposted Mr M to the exact term. But overall it acted reasonably
- Kroo's review and outcome were fair, and in line with its terms of account. But Kroo didn't meet the burden of proof to apply a CIFAS marker, so it should be removed
- Kroo should compensate Mr M £200 for the distress and inconvenience he has suffered, including having other account providers withdrawing and declining applications, and for incurring banking at a higher cost

Mr M agreed with what our Investigator said. But as Kroo didn't respond, this complaint 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 have decided to uphold this complaint. I'll explain why.

#### Account review, restrictions, and closure

Banks in the UK, like Kroo, are strictly regulated and must take certain actions in order to meet their legal and regulatory obligations. They are also required to carry out ongoing monitoring of an existing business relationship. That sometimes means banks need to restrict, or in some cases go as far as closing, customers' accounts.

I'm satisfied from the information Kroo has provided, that it acted in line with its obligations when reviewing and restricting Mr M's account. Kroo also acted in line with its obligations when asking Mr M for information about how he uses his account, and for evidence of entitlement to certain payments.

I'd like to point out at this stage that I have listened to Mr M's call with Kroo. And I'm satisfied he didn't tell Kroo he had been the victim of identity fraud and fraudulent account had been opened in his name. So this appears to be an error.

Kroo is entitled to close an account just as a customer may close an account with it. But before Kroo closes an account, it must do so in a way, which complies with the terms and conditions of the account.

The terms and conditions of the account, which Kroo and Mr M had to comply with, say that it could close the account by giving him at least two months' notice. And in certain circumstances it can close an account immediately or with less notice.

Kroo closed Mr M's account with immediate effect. Having carefully considered what Kroo's terms and conditions say about this, I'm persuaded, on balance, that it applied those terms fairly. Having said that, and as I'll discuss in more detail later, I would've expected Kroo to have exercised its due diligence process with greater care and more investigation.

### CIFAS marker

The marker Kroo filed with CIFAS is intended to record there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, Kroo is not required to prove beyond reasonable doubt Mr M is guilty of a fraud or financial crime, but it must show there are grounds for more than mere suspicion or concern.

CIFAS says:

- that there are reasonable grounds to believe that a Fraud or Financial Crime has been committed or attempted
- That the evidence must be clear, relevant, and rigorous

What this means in practice is that a financial business must first be able to show fraudulent funds have entered Mr M's account, whether they are retained or pass through the account. Having looked at the information Kroo has given me, I'm satisfied it received a report fraudulent funds entered Mr M's account.

Secondly, Kroo will need to have strong evidence to show the consumer was deliberately dishonest in receiving the fraudulent payments and knew it was, or might be, an illegitimate payment.

A marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show deliberate complicity. So, I need to consider whether Kroo has enough evidence to meet the standard of proof and load a marker for a misuse of facility with CIFAS.

Mr M was asked by Kroo about the payment it had received a report about. Mr M provided Kroo with screenshots which showed he was trading crypto currency, and that he had bought and sold a specific currency to the originator of the fraud report. Mr M made this crypto trade based on a peer-to-peer basis. That is, the fiat payment for the crypto was paid directly into Mr M's Kroo account.

When Kroo informed Mr M that he couldn't use his account for such trades, he questioned this but didn't conduct a trade again. Most importantly here, given Mr M provided screenshots of the trade, I'm satisfied Kroo should have asked him more questions if it still had concerns. But from the information I've seen, I'm not satisfied Kroo had clear and rigorous evidence of deliberate complicity or that Mr M was witting.

It's because of this that I think Kroo has applied the marker unfairly. And so, it should be removed. That means, I'm not satisfied that in applying the marker, Kroo met the standard of evidence required to do so.

### Fair redress

Mr M has shown that he had several account applications declined after his external current account was closed. He's also said this matter caused him embarrassment with his employer due to changing his account for which his salary went into. Given Kroo shouldn't have applied the marker it did, I'm satisfied it should pay him compensation for the distress, inconvenience, and embarrassment this caused Mr M.

I would've considered a higher award in line with our guidance on such compensation – this is available on our website. But I think there are strong factors here I need to consider. That's because Mr M had another marker applied by Bank T, who have subsequently said it

was an error and removed it. Because of that, I'm persuaded an award of £200 is fair compensation. To be clear, what mainly caused Mr M distress and inconvenience was also because of his other CIFAS marker being applied.

### **My final decision**

For the reasons above, I uphold this complaint in part. To put things right, I now direct Kroo Bank Ltd to remove the CIFAS marker it applied against Mr M and pay him £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 December 2024.

Ketan Nagla  
**Ombudsman**