

## **The complaint**

Miss B complains Kroo Bank Ltd recorded a misuse of facility marker against her at Cifas, a national fraud database. She doesn't think it's treated her fairly.

## **What happened**

Miss B held an account with Kroo. On 26 June 2021, two payments for £80 and £40 were paid in. Kroo restricted the account and asked Miss B to explain what the payments were for and to provide any supporting documentation for them.

Miss B replied via the chat facility, and on 1 July Kroo confirmed she could now access her account. However, later on it contacted her again for further information.

Kroo wrote to Miss B in April 2022 to tell her that it had decided to close her account. It also filed a misuse of facility marker at Cifas. Miss B wasn't aware of the latter but learned about it in 2024, when she made a Data Subject Access Request (DSAR), to see what information was held about her. She contacted Kroo to complain, saying she hadn't done anything to cause this.

Kroo investigated and issued its response. In summary, it didn't think it had made a mistake in registering the marker or taking the decision to close the account. Miss B remained unhappy and referred her complaint to us.

Kroo told us that it had taken appropriate steps with the account closure and marker. It said it had received reports from third-party banks about funds which had entered Miss B's account.

One of our Investigators looked into things but recommended the marker be removed, as Kroo hadn't provided copies of the reports it said it had received about the payments, prompting its concerns and investigation. In the circumstances, he recommended the marker be removed. But he didn't think Kroo needed to do anything in relation to the account.

Miss B accepted the outcome, but Kroo didn't. It said, at the time of the incident it was an e-money service operating under a different business, so reports came through a platform provided by them, which it no longer had access to. It said it had reached out to a third-party about this and would provide the information once received.

However, later on it said it hadn't recorded anything and suggested the complaint should be against another entity.

The Investigator highlighted the DSAR showed Kroo had filed the marker, and after no reports were received, the case was put forward for an ombudsman's 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.

Having done so, I have come to the same outcome as the Investigator and for broadly the same reasons.

Kroo says that it hasn't filed anything against Miss B at Cifas and it has suggested the complaint should be against a different entity. Its response appears confused. In any event, I don't agree with its position based on what I have. I've examined the DSAR and under '*National Fraud Database Entry filed by*' it has its name. Not that of another business.

Also, when responding to the complaint that was raised it acknowledged it had recorded the misuse of facility against Miss B and said it had done so correctly. Additionally, I can see that it referred Miss B to *its* account terms and conditions, when justifying the steps it took. Given all of this and the fact that Kroo hasn't responded to my request asking for direct evidence to rebut this point, I'm satisfied this is a complaint about Kroo's actions.

I now turn to the marker that the DSAR shows. The marker that Kroo has filed is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, it's not required to prove beyond reasonable doubt that Miss B is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance says, there must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted and the evidence must be clear, relevant, and rigorous.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Miss B's account, whether they are retained or pass through the account. Secondly, the bank will need to have strong evidence to show that Miss B was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their account to receive an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show complicity. To meet the standard of proof required to register a fraud marker; the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account to understand their level of knowledge and intention.

So, I need to decide whether I think Kroo has enough evidence to show fraudulent funds entered Miss B's account and she was complicit. And I'm satisfied it doesn't.

I say this because, Kroo hasn't provided the reports which it says prompted it to question Miss B about the payments and take the action that it ultimately did. A misuse of facility marker is a serious matter given its implications. So, when thinking about the threshold for filing it, the report is material to showing fraudulent payments entered Miss B's account.

I have seen Kroo's messages with Miss B, but these don't show me why it thought she'd received monies as a result of a fraud or scam. In light of this and the fact that we haven't been given the reports, I can't say Kroo had enough information to load the misuse of facility marker. Therefore, it's only right that it should be removed immediately.

On the matter of the account closure, Kroo is entitled to decide if it wishes to continue to offer Miss B an account, in the same way she is free to decide if she wishes to bank with it or not. But Kroo closed the account without any notice, and I don't think the circumstances warranted this (given what I have said above). However, it is also the case that Miss B has indicated she is happy to accept the Investigator's opinion, and, on the basis, he proposed, so I don't intend to comment on this matter further. Other than to say, I think a fair way to resolve this complaint is for Kroo to ensure that the fraud marker is removed immediately.

This brings to a close our review of this complaint.

### **My final decision**

My final decision is Kroo Bank Ltd should take steps to ensure the removal of the fraud marker at Cifas against Miss B. This includes the removal from any other fraud database immediately (that it may have loaded on in relation to this matter).

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 5 March 2025.

Sarita Taylor  
**Ombudsman**