

The complaint

Mr M complains that Kroo Bank Ltd (“Kroo”) failed to refund a transaction he didn’t recognise.

What happened

Mr M explained that on 2 December 2023 his phone was stolen from him whilst he was using it. The thief ran off. Mr M reported the loss of his phone to his phone provider and the police. Several days later he replaced the phone.

On 20 December, Mr M reported to Kroo that his account had been compromised and a payment for £200.84 had been paid to another financial organisation. Mr M asked Kroo to refund this amount as he wasn’t responsible for it.

Mr M said that he had difficulty dealing with Kroo and eventually he complained. Mr M went on to say that Kroo kept asking unnecessary questions whilst failing to confirm their intention to refund him.

Kroo decided not to refund Mr M as their investigation was incomplete. Kroo advised Mr M they were waiting for him to respond to their additional queries. Kroo blocked Mr M’s account whilst the investigation was ongoing.

Mr M was unhappy with Kroo’s handling of his situation and brought his complaint to the Financial Ombudsman Service for an independent review.

An investigator was assigned to look into the complaint and both parties were asked for information about the situation.

Mr M was able to confirm his version of events and added that:

- Mr M experienced multiple breaches of other banking apps. He received prompt refunds from those banks.
- The experience with Kroo was very stressful and they didn’t treat him with compassion.
- Mr M provided Kroo with the relevant information about his loss at the time he reported it (and additional information on a dispute form he was asked to send in).

Kroo provided evidence related to the disputed payment and information concerning their investigation. In summary Kroo said:

- Mr M was unable to answer their questions about the complaint, which meant it wasn’t fully investigated.
- Kroo believed Mr M still had his stolen device when he contacted them.
- Kroo blocked the account whilst they investigated.
- Kroo identified the device that made the disputed transaction- which was different to those devices associated with Mr M’s account.
- The final response letter was sent 28 March 2024.

- Kroo believed Mr M was responsible for the disputed transaction.

After reviewing the evidence, the investigator didn't think that Kroo had established that Mr M was responsible for the loss of his funds. The timeline of the situation was explained (which established Mr M's phone was stolen some weeks earlier than Kroo had assumed).

The investigator didn't think that Kroo had conducted a timely or efficient investigation. They recommended that Kroo refund the disputed transaction and make a payment to Mr M of £150 for the unnecessary stress and inconvenience caused to him.

Kroo responded and disagreed that they'd delayed the investigation. They remained of the opinion that Mr M hadn't provided answers to their questions which stopped them from investigating the claim. They acknowledged the correct timeline and accepted that Mr M wasn't responsible for the disputed payment. They offered £50 for their customer service failings.

Kroo introduced a new argument to say that Mr M was in breach of his terms and the regulations. That's because he hadn't notified them of the loss of his device at the time and Mr M confirmed he'd also kept his details in an unprotected notes app on his phone. By doing this and failing to notify them after the loss of his phone, this prevented Kroo from protecting his account.

As no agreement could be reached, the complaint has now been passed to me for a decision.

As part of my own investigation, I wanted to understand more about the loss of Mr M's phone.

Mr M was able to confirm that:

- He notified the police and other banks immediately.
- He was using his phone at the time it was stolen and was likely unlocked.
- Mr M was traumatised by the theft and had other significant family matters to deal with.
- Mr M reported the matter to Kroo as soon as he saw the unidentified transaction but didn't explain why he hadn't notified them when his phone was stolen.
- Mr M provided evidence of other bank's refunds – some of which related to disputed transactions that took place within a few days of the loss of his phone.

I issued my provisional findings on the merits of Mr M's complaint on 15 November 2024. In my provisional findings, I explained why I intended to partly uphold Mr M's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

“What I've provisionally 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

Since the investigator issued her recommendations, Kroo have now accepted that their original assumption concerning when Mr M lost his phone was incorrect. They've also now accepted that their evidence concerning the disputed payment indicates that it was someone other than Mr M who made it and Kroo have confirmed they believe Mr M wasn't responsible.

So, for the purposes of the Payment Services Regulations 2017 (PSRs), the payment is considered unauthorised. Kroo would generally be responsible for refunding an unauthorised transaction. But there are exceptions and Kroo have made an argument that Mr M was grossly negligent when he failed to notify them about the loss of his phone which had both his Kroo app and his payment card enabled to use on the phone.

The PSRs sets out the regulations related to (amongst other things) how the payment service user (Mr M) is required to act in respect of the notification to the payment service provider (Kroo) when a payment instrument (the phone) was lost, stolen or misappropriated.

S 72 states:

(1) A payment service user to whom a payment instrument has been issued must—

(b) notify the payment service provider in the agreed manner and without undue delay on becoming aware of the loss, theft, misappropriation or unauthorised use of the payment instrument.

S 77 goes on to say:

(3) The payer is liable for all losses incurred in respect of an unauthorised payment transaction where the payer—

(b) has with intent or gross negligence failed to comply with regulation 72 (obligations of the payment service user in relation to payment instruments and personalised security credentials).

There are some exceptions to this regulation, but none of them apply here.

Kroo's terms and conditions contain similar obligations, including the requirement to notify them if the user loses their mobile.

25. Fraudulent payments on your account

25.1 *If you have acted fraudulently, you will always be liable for any payments on your account. If you have not acted fraudulently the table below shows who is responsible in various circumstances.*

<i>(e) You intentionally or with gross negligence do not notify us as soon as possible of the loss or theft of your card, mobile* or security details, or that you suspect someone has tried to use any of them.</i>	<i>You are responsible.</i>
<i>* References to a mobile in the table are to the mobile device used to make Google Pay or Apple Pay payments on your current account.</i>	

25.2 *The table above refers to instances where you have acted with gross negligence. This is a legal term meaning that you have been extremely careless. Examples of gross negligence by you would include:*

25.2.3 *not telling us (or only telling us after an undue delay) once you know your card or mobile* has been lost or stolen or that your security details have been, or may*

have been, compromised.

The test for gross negligence is a high bar and one that is referred to by the Financial Conduct Authority (FCA) as "...we interpret "gross negligence" to be a higher than the standard negligence under common law. The customer needs to have shown a very significant degree of carelessness." Mr M's actions must be assessed against what a "reasonable person" would have done in his situation.

Mr M was aware his phone was stolen on 2 December 2023 and was able to notify the police and said that he notified other banks as well. Mr M replaced his phone on 7 December and the disputed transaction took place 20 December. Mr M notified Kroo about this soon afterwards.

At the time of the loss, Mr M was using his phone, so it's reasonable to assume it was unlocked. He also knew he had both his Kroo app logon details contained in an unlocked notes folder and his Kroo payment card was enabled to work on his phone.

By failing to notify Kroo in reasonable time, whoever made the disputed payment from his account was able to do so after setting up details on a new device. That wouldn't have been possible without the information stored on the phone. Given the disputed payment didn't take place for a number of weeks after the loss, I think Mr M prevented Kroo from protecting his account when he could have notified them weeks earlier.

I noted some of the other disputed payments were made within a few days of the loss of his phone and continued for some time. Mr M said he was able to notify the police and some of his other banks, so there's no particular reason that I can think of why he couldn't notify Kroo much earlier. I have considered the additional burden Mr M was dealing with regards his family and whilst I'm sympathetic to his situation, I don't think it's a reason for not telling Kroo when he was able to notify other banks and the police of the issue with his phone at the time.

From the evidence I've been able to assess here, I think Mr M met the test of gross negligence. I don't think his actions were what a reasonable person would have done in his situation. It would have been a straightforward matter to notify Kroo about the issue, either by phone or when Mr M regained access to his account.

So, I don't currently think that Kroo should be responsible for a refund based on the lack of timely action by Mr M.

Customer Service

Regarding Kroo's investigation of the issue, I do think they let Mr M down. They've argued that he didn't provide them sufficient information to conclude their investigation. But, it's also apparent that they hadn't established the basic facts from their early contact with Mr M. They made an assumption based on the way they questioned him.

There were delays and whilst I accept that they were waiting for additional information from Mr M, their early assumptions made a fair outcome unlikely. They took nearly four months to tell Mr M they weren't upholding his complaint, whilst maintaining they hadn't been able to conclude their own enquiry. If Kroo had asked basic questions at the time it was reported, together with their own information, they could have reasonably come to a conclusion about the claim made by Mr M.

I'm currently minded to make an award of £150 for the stress and unnecessary inconvenience caused to Mr M by Kroo's poor handling of his claim and the delays in dealing

with his complaint.

My provisional decision

I'm currently minded not to uphold the substantive issue regarding the loss of funds from the account, but I am intending to make an award of £150 for the stress and unnecessary inconvenience caused to Mr M by Kroo's poor handling of his claim and the delays in dealing with his complaint."

I invited Mr M and Kroo to give me any more evidence and information they wanted me to consider before issuing my final decision. Kroo didn't respond, but Mr M did. He stressed the personal and family difficulties the loss of the funds and Kroo's handling of his issue has caused him. Mr M accepted the payment for Kroo's handling of his complaint and continued to believe he was due a refund.

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, and as neither party had anything further to add that would change my provisional decision, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

I acknowledge Mr M's personal and financial difficulties for himself and his family. As I've already stated, I'm not unsympathetic to his situation, but I don't think here it would be fair or reasonable to ask Kroo to make a refund to him based on the considerations I've already set out.

My final decision

My final decision is that I uphold this complaint (in part) against Kroo Bank Ltd and in order to settle it, they're now required to:

- Pay Mr M £150 for their handling of his complaint.

For the avoidance of doubt, I do not uphold Mr M's request for a refund of the funds he lost after his device was taken.

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.

David Perry
Ombudsman