

The complaint

Mr C complains that Kroo Bank Ltd hasn't reimbursed a payment that he says he didn't make. He's also unhappy with the customer service related to his claim.

What happened

As both parties are familiar with the facts of this case, I'll summarise them briefly.

Mr C says he received a call from a scammer impersonating Kroo Bank on 12 August 2024. He was told that a payment had been attempted, and they were sending him a code to verify himself – he was convinced to share the code so that the caller could proceed to raise a refund and to prevent further payments. However, the code was actually used by the scammer to set up Apple Pay. They then made an online payment using Apple Pay for £935.39. Mr C reported the scam that day.

Mr C complained to Kroo Bank about the time taken to investigate his fraud claim and that he wasn't being kept informed. It upheld this complaint but made no award. Kroo Bank later also declined Mr C's fraud claim.

When Mr C referred his complaint to our service, he explained he remained unhappy and wanted a full refund plus compensation from Kroo Bank. We shared this with Kroo Bank.

Kroo Bank informed our service that it had declined Mr C's claim on the basis that the message it sent him explained the code was related to Apple pay and outlined that it would not ask him to share it. So, Kroo Bank determined that by sharing the code, Mr C had been grossly negligent.

The investigator upheld the complaint, in summary they said they thought the payment was unauthorised and that Kroo Bank couldn't fairly hold Mr C liable on the basis of being grossly negligent as it appeared to be a distance contract. They recommended Kroo Bank reimburse Mr C, pay him interest on this amount, and pay him £100 compensation in relation to the poor service provided.

Mr C accepted this outcome, but Kroo Bank has not responded by the deadline provided. So, the matter has been passed to me for a decision by an ombudsman.

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've reached the same conclusion for similar reasons to the investigator.

It doesn't appear to be in dispute that Mr C didn't make or agree to the payment he's disputing – for clarity I also accept this based on the information available to me as it appears a third party made the payment without Mr C's consent. So, the starting point under the relevant law - the Payment Services Regulations 2017 (PSRs) – is that Kroo Bank is liable to reimburse it.

Kroo Bank has held Mr C liable for the payment on the basis that it thinks he has been grossly negligent by sharing the code relating to Apple Pay with the scammer.

Under the PSRs, a payer can be held liable for unauthorised payments in certain circumstances where they have failed with gross negligence to comply with their obligations in relation to payment instruments and personalised security credentials. However, this provision doesn't apply to Mr C's circumstances, I'll explain why.

Under the PSRs, the payer isn't liable for any loss incurred in respect of an unauthorised payment transaction where the payment instrument has been used in connection with a distance contract (other than an excepted contract).

Kroo Bank has told our service that the payment was made online, and from the information we have the merchant appears to be a retailer. The investigator concluded, on the evidence available, that this was likely a distance contract. Kroo Bank has not responded or provided evidence to indicate that it was an excepted contract.

The disputed payment is clearly a 'card not present' transaction as it was made online, and based on the information available, there is nothing to indicate it is an 'excepted contract'. I'm satisfied Kroo Bank has had the appropriate opportunity to provide further information to our service about the payment if it disagreed on this point.

Where evidence is incomplete or contradictory, I need to make a finding on the balance of probabilities and conclude what I think is more likely than not to have happened on the evidence available.

On the evidence available I think it's more likely than not that the disputed payment was a distance contract and not an excepted contract. So, for the reasons explained I think Kroo Bank should reimburse the disputed payment and apply interest to this award to reflect the time Mr C has been without his funds.

Mr C also raised with Kroo Bank that he had needed to contact it for updates and that he wasn't kept informed with the progress of his claim. Mr C first reported the scam on 12 August 2024 and received Kroo Bank's decision to decline his claim on 25 November 2024. Kroo Bank has accepted that it should have kept Mr C more informed and Mr C has described that he has been very stressed by the situation. So, I agree it would be fair to make an award of £100 to reflect the impact this had on him.

My final decision

My final decision is that I uphold this complaint and that Kroo Bank Ltd should do the following:

1. Reimburse Mr C £935.39; and,
2. Pay Mr C simple interest at a rate of 8% per annum on this amount from the date of the loss to the date of settlement; and
3. Pay Mr C £100 compensation for the distress and inconvenience caused.

If Kroo Bank Ltd considers that it's required by HM Revenue & Customs to deduct income tax from this interest, it should tell Mr C how much it's taken off. It should also give Mr C a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 16 July 2025.

Stephanie Mitchell
Ombudsman