

The complaint

Mr P complains that Kroo Bank Ltd has declined to refund disputed transactions that were made from his account.

What happened

Between April and May 2024, several transactions debited Mr P's account to three different online retailers that he says he didn't make.

On 5 May 2024, Mr P contacted Kroo to dispute the transactions, on the basis that he didn't recognise them, and asked the bank for a refund. But Kroo didn't think it was liable for his loss.

Mr P raised a complaint. In response, Kroo said:

- Upon reviewing Mr P's account, it found that the disputed transactions were not fraudulent and not eligible for a refund.
- It appreciated the length of time taken to review the fraud claim was not to Mr P's expectations. Whilst the fraud claim took longer than expected, it did its best to resolve matters as quickly as possible.
- It was sorry for any disappointment caused.

Mr then referred his complaint to our service where it was considered by one of our investigators. She believed Mr P had most likely authorised the first payment to all three retailers, but not any subsequent amounts. So she asked Kroo to refund those subsequent amounts to Mr P.

But Kroo didn't agree with our investigator. It noted she'd found Mr P authorised the initial payments, and therefore did not believe it should be expected to evidence whether the subsequent payments were authorised in the same way. It explained that Mr P had reported *all* of the transactions as fraudulent, and therefore it had correctly investigated the complaint in line with this. It also suggested Mr P had been grossly negligent when entering into an agreement with the retailers.

As no agreement could be reached, the 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've reached the same conclusions as our investigator for the same reasons. I've explained why below.

The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. So what I have to decide here is whether it's more likely than not

that Mr P, authorised the disputed debit card transactions.

Kroo has confirmed two of the retailers processed the transactions as 'recurring.' So it seems Mr P's card details were entered into a Continuous Payment Authority ('CPA'). All three retailers appear to specialise in beauty/skincare products, and from visiting their websites, the use of a CPA appears to be as part of individual subscriptions, enabling discounts for future purchases.

Our investigator concluded that Mr P most likely authorised the initial transaction for all three retailers, in view of the way Kroo says they were authorised. This was either using a historic Apple Pay token using Mr P's card information, or by 3DS – which would've required Mr P's biometrics, such as fingerprint or 'Face ID.' In view of this, and on the balance of probabilities, I'm in agreement with our investigator that Mr P most likely authorised the initial transactions to each retailer. So I don't find that Kroo should issue a refund for those amounts.

However, In December 2012, the Office of Fair Trading (OFT) issued principles for using CPAs. Although the OFT doesn't exist anymore, the Financial Conduct Authority has said that these principles still apply so we should still take them into consideration.

The points relevant to Mr P's dispute are:

Setting up CPAs:

- The merchant should make it clear they're using a CPA. The consumer should positively agree to the amounts and frequency of the payments. 'Opt-out' clauses are not good enough.
- The key parts of the CPA (e.g. dates, amounts) must be displayed clearly and not just hidden in the terms and conditions.
- Failure to get the consumer's positive, informed consent may mean the contract is unenforceable and the consumer is entitled to a refund of all payments.

So in view of the above, in order to continue to hold Mr P liable for the subsequent transactions, Kroo needs to evidence that Mr P knowingly entered into a CPA for each retailer, which would mean the subsequent transactions were authorised by him.

I've asked Kroo to provide further evidence to support this. But it hasn't done so. And, in response to the investigator's findings, it specifically said it doesn't think it should be expected to evidence whether the subsequent payments were authorised in the same way as the initial amounts. And that it could be argued that Mr P had been grossly negligent when entering into an agreement with the merchants at the point of sale.

I realise that Mr P said he had no dealings at all with all three retailers, and Kroo took this on face value and investigated his fraud claim on this basis. But, Kroo is the expert here. It's already told us the transactions were marked as 'recurring' by the retailers, and even though Mr P says he had no dealings at all with the individual retailers, retailers such as these are known to offer 'free trials' or 'member subscriptions,' which Kroo should be fully aware of. Had Kroo checked to see if the merchant's made the use of the CPA clear following the initial transactions, it could've had further conversations with Mr P about this. If the terms weren't made clear, then whilst the technical evidence supports Mr P authorising the initial transactions, Kroo cannot treat any subsequent transactions as authorised by Mr P.

I appreciate why Kroo investigated the claim as 'fraud' rather than a 'dispute.' But whether or not the transactions are as a result of fraud isn't the test here. It all comes down to whether or not the individual retailers made it clear that Mr P was authorising not just the initial

amounts, but the use of his card details as part of a subscription too. Kroo hasn't provided any evidence that this was made clear to Mr P. And so without this, I can't agree that it is entitled to hold him liable for any of the subsequent transactions that were taken. I also do not consider Mr P in any way acted with gross negligence in this situation as Kroo has suggested. Therefore, Kroo is entitled to hold Mr P liable for the first transactions that debited to the three individual retailers, but it must refund all subsequent payments, plus interest.

I'm aware that Mr P has told us a lot of information about his personal circumstances and the difficulties he's been facing recently. I'd like to thank him for being so open with us. And I was sorry to hear he's been having a difficult time. I realise that identifying unrecognised transactions on his account must've caused him difficulties, and I don't find that Kroo responded correctly when it considered his fraud claim. As such, I think it's appropriate that Kroo pay Mr P £75 compensation for the trouble and upset this situation has caused to him.

Putting things right

For the reasons I've mentioned above, whilst I conclude that Mr P authorised the initial transactions to the three beauty/skincare retailers, Kroo hasn't evidenced that he authorised the use of his card details to be used as part of a CPA. As such, Kroo Bank Ltd should:

- Refund any subsequent transactions to the three individual retailers.
- Include 8% interest on this amount, from the date of the transactions to the date of settlement.*
- Pay Mr P £75 compensation.

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

My final decision

My final decision is that I uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 October 2025.

Lorna Wall
Ombudsman