

The complaint

A company I'll call C complains that Zotto Limited (Zotto) blocked its account and withheld the balance of £42,926.78 and €119.30, before deducting £31,873.80 when it eventually returned the money, saying the difference represented fines it had incurred because of C.

To put things right, C wants Zotto to return the full balance of its account.

What happened

In or around June 2020, Zotto entered into a contract with C to provide payment processing services. It had told C that it provides accounts for wholesalers and retailers of a particular product that I'll refer to as P, and it offered C an incentive to join Zotto, because of the nature of C's business.

On or around 25 August 2021, Zotto blocked C's account, while it carried out an investigation. It asked various questions of C, which C answered, and Zotto lifted the block on 1 September 2021. It said it had reviewed a chargeback C had received in the sum of €1,155, which it was satisfied C had resolved quickly. And that it had read reviews of C's business on various platforms, which Zotto described as "very impressive".

However, it retained the balance held in C's account. It said it would release payments to C incrementally over the course of several weeks, but only once C had started using Zotto's platform to take payments again (C had reverted to its old provider because of the issues with Zotto).

C wasn't happy with Zotto's actions, so it asked Zotto why it had blocked C's account in the first place. Zotto said the account was suspended for a serious breach of its card scheme's rules and anti-money laundering regulations, including use of Zotto's payment services on a website not approved by Zotto, sales of products online in areas where they are considered illegal, and because of a high ratio of chargebacks.

C disputed Zotto's claims and asked it to clarify its concerns and demonstrate that C was in breach of its terms of business. But Zotto didn't comply and instead issued a notice to close C's account on 4 October 2021, which said:

"We have terminated your account and blocked all your outstanding funds for the next 180 working days, allowing us time to submit our account termination report to the FCA & NCB and ensuring that no additional chargebacks are claimed by any of your customers."

C challenged Zotto's right to withhold its money, but Zotto again maintained its position and declined to release the account balance until 180 days had expired.

C reluctantly accepted Zotto's position and waited for the 180 days to pass. In March 2022, C wrote to Zotto about the release of its funds, as the 180-day period was due to end the following month. Zotto responded on 22 March 2022 saying it had returned £11,052.98 and

€119.30 to C, but that it had deducted \$42,050, representing fines it had incurred that C was liable to indemnify Zotto for, in accordance with its Merchant Agreement.

Zotto didn't specify what section of its Merchant Agreement it was seeking to rely on, nor did it explain what the fines were for or provide any evidence to demonstrate that the fines had been incurred because of C's actions.

C sought to challenge Zotto, but ultimately wasn't able to reach a resolution, so it asked for our service to investigate.

Zotto told our service it began receiving an "inordinate volume" of chargebacks for substantial amounts, but only provided details of one chargeback (the €1,155 it had previously told C it was satisfied with). Zotto said its merchant acquirer (MA) had terminated its agreement with Zotto owing to the high volume of chargebacks Zotto had received because of C, and that it had incurred a penalty of \$42,050 as a result of this.

To evidence the fines, Zotto sent our service a letter it had received from its MA. That letter was dated 18 March 2021 and stated that the merchant acquirer had terminated its agreement with Zotto on 18 August 2020. It set out details of the fine Zotto was seeking to hold C liable for, which was broken down as a \$32,050 fine from a card providing service I'll call M, the cost of Zotto's MA's investigation at \$5,000, and liquidated damages of a further \$5,000.

Enclosed with the letter dated 18 March 2021 was a letter from M to Zotto's MA dated 25 September 2020, that set out the reasons for the fine of \$32,050. M said the fine related to actions of a third-party company I'll call H, which was a website based outside of the UK, and the letter made no reference to C whatsoever. When Zotto sent these letters to our service, it made no attempt to demonstrate a link between H and C.

Our investigator sent Zotto a copy of the email C had received from Zotto before joining, in which Zotto had offered C an incentive, and in which it said it was looking for retailers of P. She asked Zotto for its comments given Zotto's concerns appeared to be connected with what C was selling. And she asked for evidence of the chargebacks Zotto said it had received from C's customers.

When Zotto replied, it said that the representations made to C before it became a customer didn't represent Zotto's acceptance policy for customers such as C, and that it had terminated the employment of the representative who sent the email to C, because of that misrepresentation. Zotto said it excluded merchants who sold P as a rule, and that C had been accepted as a test case.

It did provide evidence of more chargebacks, but only demonstrated a further six, the total of which was £520.41.

Our investigator looked at the evidence and information Zotto had provided, but she didn't accept it. She said the correspondence Zotto submitted as evidence of C's liability for the fines only showed that Zotto, not C, was liable, that they made no reference to C and that one of the letters was issued in September 2020, suggesting Zotto was aware of the issue long before it chose to take any action.

Zotto said it would obtain evidence to show C was liable for the fine but when it failed to do so, our investigator issued her findings, upholding C's complaint. She accepted Zotto was entitled to block C's account and withhold the funds for 180 days. But she wasn't satisfied it was entitled to offset its fine against C's account balance.

She said Zotto should refund C the \$42,050 it had deducted from its closing balance, pay 8% simple interest on that balance from 22 March 22 until the date the funds are returned, and pay a further £150 to compensate C for any inconvenience it had experienced as a result of Zotto's mistakes.

Both parties accepted our findings, but Zotto failed to make payment. When our service contacted Zotto to chase settlement, it said it had scheduled the settlement to be paid in June, but again that payment failed to materialise. Our service attempted to contact Zotto to arrange payment on several further occasions, but it didn't reply to our requests.

Because Zotto didn't comply with our investigator's findings, the matter was referred to me to issue a final 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.

Our investigator is right to say that Zotto is entitled to block an account while it carries out a review of the activity on that account. And I accept Zotto was complying with its legal and regulatory obligations when it did so on this occasion.

However, if a financial business intends to withhold a customer's account balance, it must demonstrate that doing so was reasonable in all of the circumstances. Zotto showed our service that it had received six chargebacks totalling £520.41 that it wasn't happy with. And it gave further reasons in support of its decision.

Zotto didn't provide context of the volume and value of chargebacks against the volume and value of uncontested transactions though. So, it's not possible for me to properly assess whether the chargebacks Zotto received were a high ratio of C's transactions. And Zotto didn't provide any evidence to show further chargebacks had been received after the block.

Based on the account balance, I can estimate that the chargeback ratio was no higher than approximately 1%, but I would need more information to determine the correct figure. Although it is worth noting that Zotto ultimately released C's balance without making further deductions in respect of chargebacks. And I note it wrote to C after 169 days (and only after C had contacted Zotto for an update) to confirm the outcome, with no explanation of the shortened period.

With that being said, I haven't investigated the above in further detail, so I can't say whether or not Zotto acted reasonably in withholding the funds for 180 days. I contacted C's legal representative to discuss the point of the 180-day block, and C agreed not to pursue that point in the interest of bringing this matter to a close more expeditiously. So, I make no finding on the point of whether or not Zotto was entitled to retain C's funds for the period it did.

I have, though, looked at Zotto's decision to deduct a fine of \$42,050 from C's account balance when it returned C's funds. The evidence Zotto submitted in support of its actions doesn't demonstrate that Zotto was fined because of activity on C's account. As I've said above, the letter from Zotto's MA to Zotto dated 18 March 2021 states that the MA's agreement with Zotto had been terminated effective 18 August 2020, some 12 months before Zotto blocked C's account. And the letter from M to Zotto's MA confirming details of the breach that led to the fine was dated 25 September 2020, meaning that it must have related to activity before that date.

That timeline alone suggests the fine wasn't connected to payments received by C. Zotto's contract with C only commenced in June 2020, so there was a period of approximately two months during which C was contracted to Zotto and its MA. Zotto hasn't submitted any evidence to show the fine related to payments made to C during that period. In fact, it hasn't submitted any evidence to show it was taking payments on behalf of C during that period, and the earliest chargeback it has evidenced related to a payment dated 18 July 2021.

The letter from M to Zotto's MA sets out the basis of the fine of \$32,050, but it refers to the actions of a third-party website (H), not C. Our investigator asked Zotto to provide evidence to show that the fine was incurred as a result of actions on C's part, but Zotto didn't provide anything, then it accepted our investigator's findings that the fine was not related to C.

For the reasons I've set out above, I'm not persuaded that Zotto was fined because of actions on the part of C, and I've seen no basis on which Zotto can reasonably hold C liable for the fine it incurred. It follows then that Zotto should refund C's account balance in full, and without further deductions.

And because Zotto unfairly deprived C of access to its money, I find that Zotto must also pay C simple interest at the rate of 8% from the day it should have released C's funds up to the date it makes payment. Because C has agreed not to contest the 180-day period, the start date of the interest is 22 March 2022, i.e. the date Zotto told C it would be returning C's account balance.

Before Zotto accepted our investigator's findings, it asked her to reconsider the award of interest on the basis it had acted in good faith. However, Zotto hasn't provided any evidence to demonstrate it was acting in good faith. And in any event, I'm persuaded that Zotto unfairly deprived C of its money, without justification. So, interest at the rate of 8% represents fair compensation in my view in recognition of the fact that C was unfairly deprived of its funds, and so wasn't able to make use of those funds.

Finally, I turn to the matter of compensation for inconvenience C experienced as a result of Zotto's mistakes.

Our service can award compensation for distress and inconvenience customers experience as a result of a financial business's mistake. However, because C is a limited company, I can only make an award for inconvenience and not distress. Zotto's customer is C, not C's director, Mr C, so I can't make an award for any distress Mr C has experienced personally.

And of course, a limited company cannot feel distress. However, I can make an award for any inconvenience C experienced as a result of Zotto's error, such as C having its director's attention diverted away from his regular business duties.

And in this case, I accept that this issue would have caused C a significant degree of inconvenience. Its director's attention was taken away from his usual duties for an extended period of time in order to pursue return of C's funds that should have been returned without dispute.

Further, that inconvenience was compounded by Zotto's actions after accepting our investigator's findings. It told our service it would arrange payment twice, then failed to do so and our service chased Zotto several further times without reply. C was kept apprised of developments and Mr C's attention was diverted further because of Zotto's delays and lack of communication.

Before I issued this decision, I wrote to Zotto twice, saying I would consider awarding additional compensation if it was necessary to issue a final decision, but it didn't reply with

any representations. With that being the case, and for the reasons I've set out above, I'm awarding £300 in recognition of the inconvenience its actions caused C.

My final decision

My final decision is that Zotto Limited must pay C:

1. £31,873.80, representing the missing account balance it should have returned to C;
2. Simple interest on the above sum at the rate of 8% from 22 March 2022 until the date of payment; and
3. £300 for the inconvenience it caused C.

Zotto Limited must make the above payment in full within 14 days of the date C accepts this final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 12 October 2023.

Alex Brooke-Smith
Ombudsman