

The complaint

Mr D complains that Zempler Bank Limited (Zempler) is refusing to refund him the amount he lost as the result of a scam.

Mr D is being represented by a third party. To keep things simple, I will refer to Mr D throughout my decision.

What happened

The background of this complaint is well known to all parties, so I won't repeat what happened in detail.

In summary, Mr D tells us he found an advertisement online for a specialist trading company I will call X. Mr D was interested in the potential investment opportunity so clicked on the link and left his contact information.

Mr D then received a call from an individual working for X that I will call Y. Y sent Mr D a link to a professional looking website and provided further information about X.

Mr D provided identification documents and started to invest on what appeared to be a genuine investment platform where Y traded on Mr D's behalf. As Mr D's investments appeared to be doing well, he continued making further payments. As part of the investment process Mr D was required to download remote access software.

Mr D tells us that he saw a warning on the FCA website about X being cloned by scammers and requested to withdraw from the investment. Y told Mr D that he would have to make further payments first and Mr D realised he had fallen victim to a scam.

Mr D made the following payments from his Zempler account in relation to the scam:

<u>Payment</u>	<u>Date</u>	<u>Payee</u>	<u>Payment Method</u>	<u>Amount</u>
1	3 November 2022	Revolut	Debit Card	£1,020.00
2	9 November 2022	Foris Dax	Debit Card	£600.00
3	23 November 2022	Revolut	Debit Card	£1,000.00
4	23 November 2012	Revolut	Debit Card	£1,150.00
5	1 December 2022	Revolut	Debit Card	£1,095.00
6	1 December 2022	Revolut	Debit Card	£1,095.00
7	1 December 2022	Wallbitex	Debit Card	£952.42 + £28.48 fee
8	1 December 2022	Wallbitex	Debit Card	£4,329.17 + £129.44 fee
9	1 December 2022	Wallbitex	Debit Card	£3,376.75 + £100.96 fee
10	23 December 2022	Wisenex	Debit Card	£996.77 + £29.80 fee
11	23 December 2022	Wisenex	Debit Card	£2,634.64 + £78.78 fee
12	23 December 2022	Revolut	Debit Card	£2,200.00
13	10 January 2023	Wisenex	Debit Card	£2,013.06 + £60.19 fee
14	10 January 2023	Revolut	Debit Card	£3,000.00
15	14 January 2023	Revolut	Debit Card	£3,000.00
16	17 January 2023	Revolut	Debit Card	£1,800.00

17	21 January 2023	Wisenex	Debit Card	£704.81 + £21.07 fee
18	21 January 2023	Revolut	Debit Card	£3,000

Our Investigator considered Mr D's complaint and didn't think it should be upheld. Mr D disagreed, so this 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.

It has not been disputed that Mr D has fallen victim to a cruel scam. The evidence provided by both Mr D and Zempler sets out what happened. What is in dispute is whether Zempler should refund the money Mr D lost due to the scam.

Recovering the payments Mr D made

Mr D made payments into the scam via his debit card. When payments are made by card the only recovery option Zempler has is to request a chargeback.

The chargeback scheme is a voluntary scheme set up to resolve card payment disputes between merchants and cardholders. The card scheme operator ultimately helps settle disputes that can't be resolved between the merchant and the cardholder.

Such arbitration is subject to the rules of the scheme, meaning there are only limited grounds and limited forms of evidence that will be accepted for a chargeback to be considered valid, and potentially succeed. Time limits also apply.

Mr D was dealing with X, which was the business that instigated the scam. But Mr D didn't make the debit card payments to X directly, he paid a separate cryptocurrency exchange and a third-party account provider. This is important because Zempler would only have been able to process chargeback claims against the merchants he paid, not another party (such as X).

Mr D made the payments in relation to the scam in exchange for the service of converting those funds into cryptocurrency. Therefore, the requested service was provided. The fact that the cryptocurrency was transferred elsewhere – to the scammer – doesn't give rise to a valid chargeback claim against the merchants Mr D paid.

Should Zempler have reasonably prevented the payments Mr D made?

It has been accepted that Mr D authorised the payments that were made from his account with Zempler, albeit on X and Y's instruction. So, the starting point here is that Mr D is responsible.

However, banks and other Payment Services Providers (PSPs) do have a duty to protect against the risk of financial loss due to fraud and/or to undertake due diligence on large transactions to guard against money laundering.

The question here is whether Zempler should have been aware of the scam and intervened when Mr D made the payments. And if it had intervened, would it have been able to prevent the scam taking place.

Mr D had his Zempler account for some time before making the payments in dispute. The payments Mr D made from his Zempler account were not individually for a value I would

expect to have caused Zempler concerns. It was also not unusual for Mr D to make similar value payments from his account, and he had made payments in relation to cryptocurrency before. With this in mind, and considering the time the payments were made, I don't think any of them would reasonably have triggered Zempler's fraud prevention systems prompting it to intervene.

As I don't think it was unreasonable that Zempler didn't intervene when Mr D was making the payments, I don't think it missed an opportunity to prevent the scam and it is not responsible for Mr D's loss.

I appreciate Mr D has said that a timely intervention would have prevented his loss, but as I've said above, I don't think it was unreasonable that Zempler didn't intervene when the payments were made, so this does not change my decision.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 3 January 2025.

Terry Woodham
Ombudsman