

The complaint

Ms W, via her deputy, complains that Zempler Bank Limited didn't administer her account correctly after it received a Court of Protection order.

What happened

In August 2022, Zempler received a Court of Protection order for Ms W. This was added to her file. In January 2023, it received a new Order appointing a different body as her deputy. And in March 2024, it received an updated Order and a named contact from this body, who requested information on Ms W's account.

In May 2024, this deputy made a complaint about how Ms W's account had been handled since they took over. They specifically complained about eight £500 ATM withdrawals that occurred between 20 March and 25 April 2024. Ms W didn't recall making the withdrawals and the cash couldn't be found at her home. The deputy set out that Ms W didn't have capacity and that these withdrawals shouldn't have been able to be made on her account.

Zempler didn't agree it had done anything wrong. It explained that it hadn't received instructions to restrict Ms W's account in this way, so it didn't refund her.

Ms W, via her deputy, came to our Service. Our Investigator didn't agree Zempler had acted fairly or in line with its own processes, so asked it to refund Ms W. Zempler disagreed and asked for an Ombudsman to reconsider the case.

I attempted to informally resolve the case with Zempler. I set out what its internal policy stated on these Orders and also why I considered it wasn't fair to not take any action on Ms W's account. Zempler disagreed and explained how it applies the policy in practice. And it questioned whether other parties are instead the ones responsible for how the account was managed, considering the Order in place. As an agreement couldn't be reached, the case has been returned to me for a 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.

In order to determine how Ms W's deputyship order should've been treated by Zempler, we asked for a copy of its internal process on handling third party access to accounts. For a deputyship/Court of Protection Order the process sets out (with my emphasis):

*A deputyship order gives a third party the ability to make decisions on behalf of someone who has **lost the capacity to care for and make decisions** for themselves*

And explains:

There are many reasons why a person may lack mental capacity. Guidance can be provided by the Office of Public Guardian along with support during the application of a deputy/deputies.

While there's been a deputyship order in place for a number of years, Ms W has only complained about how this was handled from 14 March 2024, when a specific individual took over as her deputy. So this is when I am considering Zempler's actions from only.

Zempler has explained that when it received the updated Order in March 2024, as this Order didn't give specific instructions to restrict her account, it added the named deputy to the account but took no further action. And it's explained that while it does describe the Order in the above way, practically, it doesn't automatically act as if the person has lost capacity, as this process states. It looks for the Order to set out what capacity the customer has and acts on this instead.

In line with Zempler's own procedures, I would've expected the starting position for Ms W's account to be in line with the process above (steps taken to reflect Ms W has lost capacity and therefore can't make decisions for herself). And then, after an appropriate conversation with the deputy, an individual plan to be put in place that best supports the need of that customer. The process sets out that guidance *can* be provided as part of the application, but doesn't say it always will be or that Zempler will always receive this. And I can't say that here, where there isn't guidance, the right thing was to do nothing to restrict the account.

Zempler has chosen to define these Orders in the above way and this definition is very clear. I can't fairly see how Zempler can apply its own process and also have taken no action on Ms W's account. There are a number of steps involved in getting an Order like this and they are only granted when necessary to protect the individual. Zempler's process seems to recognise this and the severity of the situation for an Order to be in place.

Ms W's Order does set out that the deputy is authorised to change her locks and exchange information on her personal welfare proceedings, so indicative that Ms W has lost capacity in the way Zempler's definition suggests. While I recognise Ms W's specific Order didn't go on to then provide it with specific instructions, the very existence of the Order means that, according to its own policies, Zempler defines Ms W as having lost the capacity to make decisions for herself – and recognises that she lacks mental capacity. So I consider it needed to take action on her account in line with this.

While I fully accept the need to treat vulnerable customers as individuals and assess their personal needs accordingly, I can't agree that in this case Zempler has acted fairly. From 31 July 2023, a new Consumer Principle was introduced through the Consumer Duty and this includes firms acting to avoid foreseeable harm for customers. Ms W is a very vulnerable person and it ought to have been foreseeable to Zempler that by placing no restrictions on her account, it left her and her account open to an obvious risk of harm.

Had Zempler acted as I have set out and placed restrictions on Ms W's account, this would've prevented the disputed ATM withdrawals taking place. So I am persuaded it should now refund these to Ms W, as they are the result of its failure to appropriately act on her deputyship order.

Zempler has made a number of points about the actions of Ms W's deputy and their handling of her account. But Ms W is the complainant in this case and my role is to assess how Zempler handled her account and whether it did anything wrong in its capacity as her bank. I don't have the power to consider any other parties or body here, so I won't be commenting further on the points made in relation to this.

Ultimately, I have identified shortcomings in the way Zempler handled Ms W's account and dealt with the deputyship. And as I'm satisfied that these led to a loss for Ms W, as set out above, Zempler is required to reimburse Ms W.

Putting things right

Zempler Bank Limited should refund Ms W £4,000 – the total amount of the ATM withdrawals between 14 March 2024 and her account closure. It should pay 8% simple interest per annum on this amount, from the dates of each withdrawal to the date of settlement.

My final decision

For the reasons set out above, I uphold Ms W's complaint against Zempler Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W, via her deputy, to accept or reject my decision before 1 October 2025.

Amy Osborne
Ombudsman