

## **The complaint**

Mr C complains Zempler Bank Limited didn't do enough to help get a refund for a transaction made on his credit card.

## **What happened**

In July 2022, Mr C bought a piece of gym equipment, paying with his Zempler credit card. In June 2024, Mr C says the motor in the equipment was faulty meaning it wasn't fit for purpose.

Mr C tried to resolve the issue with the seller, which I'll call "H". H acknowledged there was likely a problem with the motor, but due to the amount of time that passed since Mr C bought the equipment, said it wasn't able to help.

Unhappy with H's response, Mr C contacted Zempler in June 2024 for help in getting a refund. Zempler said Mr C was out of time to raise a chargeback, which is a means of asking for a refund from H via the card scheme provider – Mastercard.

Zempler initially said it wasn't possible to consider a claim under Section 75 of the Consumer Credit Act 1974 ("S75"), however then accepted this was incorrect. In considering a S75 claim, Zempler deemed the fault most likely came about because of wear and tear, so didn't agree it was liable to refund Mr C the value of the equipment.

Mr C remained unhappy and complained to Zempler about the outcome of his claim and the service he'd received. Zempler said it had fairly considered his dispute against the chargeback and S75 rules, and for the reasons it had previously given it didn't owe a refund. Zempler did acknowledge its service could have been better and apologised for this, offering £25 for any inconvenience caused.

Mr C disagreed and referred his concerns to our service. One of our Investigators looked into what happened and thought Zempler had correctly considered Mr C's dispute against the chargeback rules and its obligations under S75. He thought there wasn't enough evidence to say there had been a breach of contract to make Zempler liable under S75. In relation to the service Zempler had provided, our Investigator thought there had been some failings and recommended Zempler pay a further £75 to apologise for this.

Neither party agreed with our Investigator's conclusions. Mr C said his S75 claim was valid so Zempler should reimburse him the value of the gym equipment. Zempler said its payment of £25 was reasonable to acknowledge any upset caused, so didn't agree it should pay anything further. As the matter couldn't be resolved, it's 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.

There were two ways that Zempler as the provider of the credit could have considered Mr C's request for help in getting his money back, via a chargeback or a claim under Section 75. I've considered both below.

### *Chargeback*

Chargeback is a scheme through which Zempler can ask H to provide a refund via the card scheme provider – Mastercard. The scheme sets out strict rules for a chargeback to succeed. One of these is that a dispute about defective goods must be raised within 120 days of delivery of the goods.

Mr C first raised his concerns to Zempler in June 2024, having received the equipment in July 2022, so more than 120 days later. As a result, I don't think Zempler acted unfairly by not raising a chargeback, as it was out of time.

### *Section 75*

In deciding what I think is fair and reasonable, I need to have regard to, amongst other things any relevant law. In this case, the relevant law is S75, which says that, in certain circumstances, if Mr C paid for goods or services, in part or whole on his Zempler credit card, and there was a breach of contract or misrepresentation by the supplier (H), Zempler can be held responsible.

Mr C raised his dispute on the basis the motor was damaged, meaning the gym equipment was unusable. So, he's effectively saying there's been a breach of contract because it's failed much sooner than it's expected lifespan.

Mr C says as the problem occurred sooner than expected and within six years of buying the gym equipment, his S75 claim should succeed. While a S75 claim should typically be made within six years of the date of purchase, this doesn't mean Zempler automatically becomes liable for any problems that may occur within six years of purchase. Rather there still needs to be evidence of a breach of contract.

The problem here is that I don't have much by way of evidence to show what the cause of the problem with the motor was. I haven't seen enough to say the problem was present or developing at the point of sale. As Mr C was able to use the gym equipment without issue for 18 months, I don't then find Zempler was wrong to conclude there wasn't enough to say there'd been a breach of contract, or that it was liable for the value of the equipment.

As a result, I don't think Zempler acted unreasonably in not reimbursing Mr C the value of the gym equipment.

### *Customer Service*

Zempler has acknowledged it gave Mr C the wrong advice when calling in June 2024, as the agent and manager weren't able to assist with his enquiry about S75. Zempler apologised for this in its response to Mr C's complaint, while giving details of how he could submit a S75 claim, alongside offering £25 for its error.

Our Investigator recommended Zempler increase its compensation to £100 to recognise the inconvenience and upset caused to Mr C. In the circumstances I do find this reasonable. It's clear that being given the wrong advice during the call caused Mr C concern and he's explained that because of this he continued to be worried about whether his S75 claim had been fairly assessed.

While I'm satisfied that Zempler did fairly consider Mr C's S75 claim, as explained above, I think this has been a noticeable point of concern that could have been avoided had Mr C been correctly advised in the first instance. Therefore, when considering the inconvenience and upset caused to Mr C, I do think it's appropriate that Zempler pay £75 on top of the £25 it originally offered in resolution to this complaint.

### **My final decision**

For the reasons I've set out above, I partly uphold this complaint and direct Zempler Bank Limited to pay Mr C any of the £100 compensation that hasn't already been paid, I make no other award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 April 2025.

Christopher Convery  
**Ombudsman**