

The complaint

Mr K complains that Zempler Bank Limited (“Zempler”) won’t refund his losses after he fell victim to a scam.

What happened

On 24 February 2024, Mr K opened an account with Vinted. Shortly after opening his account, he received contact from someone claiming to be a customer service agent for Vinted saying his account needed to be verified with a payment. Unfortunately he came to realise he’d been scammed as he wasn’t speaking to someone who worked for Vinted, and three payments (£149.75, £284.95, and £284.95) that debited his account weren’t returned. He then contacted Zempler to report the scam.

Zempler declined to refund Mr K, and he raised a complaint on 26 February 2024. Zempler issued its final response letter on 7 March 2024 continuing to decline refunding Mr K. It said this was because the payments were verified through 3D-Secure (“3DS”). But as a gesture of goodwill, it agreed to refund £9 relating to the cash transaction fees associated with the three payments. Unhappy with Zempler’s response, Mr K referred his complaint to our Service.

One of our investigators looked into Mr K’s complaint and didn’t uphold it. In summary they said as Mr K authorised the payments, the starting position is he’s liable for his loss and as they didn’t consider the payments out of character for Mr K’s account, Zempler wasn’t liable to refund him. Mr K didn’t agree saying that he felt Zempler ought to have held the payments whilst it investigated the scam.

As Mr K didn’t agree, the matter was passed to me to decide. I issued my provisional decision on 11 December 2024 where I didn’t uphold this complaint. Zempler didn’t respond, and Mr K didn’t agree. He said he was told by Zempler that the payments would be held for the fraud team to investigate, and he believes it should have held them in line with what it said.

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 don’t uphold this complaint. I’ll explain why.

In line with the Payment Services Regulations 2017 (“PSRs”), the relevant legislation here, the starting position is that Zempler is liable for unauthorised payments, and Mr K is liable for payments he’s authorised.

It isn’t in dispute that Mr K authorised the payments in question, as he explains he thought he needed to make payments to verify his account and that the funds would be returned straight away. Because of this, he is therefore presumed liable for the payments in the first instance.

However, taking longstanding regulatory expectations and requirements into account and what I consider to be good industry practice at the time, Zempler should fairly and reasonably have been on the look-out for the possibility of fraud and have taken additional steps, or made additional checks, before processing payments in some circumstances.

Having considered Mr K's account activity for the 12 months prior to the payments involved in the scam – a time I consider reflects relevant recent activity – I don't believe it was significantly out of character compared to genuine activity that took place on the account. The payments, considering their values, were comparable to other payments Mr K had made in that time. I also don't believe the payments were of values individually, or collectively, that meant Zempler ought to have been concerned.

For these reasons I don't think Zempler has made an error by not considering the activity suspicious and intervening when these payments were made.

Mr K says that Zempler should have held the payments whilst it investigated the scam, and that Zempler told him the payments would be held until the fraud team looked at them a couple of days later. Zempler hasn't provided our Service with the call it had with Mr K when he first reported the scam, but I have reviewed its notes from the call and there is no record that the payments would be held until the following week or until its fraud team reviewed the matter.

However, I can see that a couple of days after the fraud was reported, a decision was reached by the fraud team. And that after it investigated the scam claim, it concluded the payments were authorised and held him liable for the loss.

So, although there may have been some confusion in the call where Mr K reported the scam, I don't think this impacts whether the merchant should have been able to collect the funds. This is because even if I accepted Zempler told him they would be held, he received a response from the fraud team which would have still resulted in the funds being released.

This is because a debit card payment shows as pending once the sending bank has processed and approved it, but the merchant hasn't yet requested the funds. There are only limited circumstances in which a pending payment can be cancelled. As Mr K authorised the payments and had sufficient funds available, I don't think Zempler has made an error in allowing the merchant to collect the funds. The merchant wasn't the perpetrator of the scam, a third party was.

I recognise Mr K has fallen victim to a cruel scam, and he'll be disappointed with this decision. Zempler already refunded Mr K the cash transaction fees totalling £9 and based on what I've set out above, there's nothing outstanding for Zempler to resolve.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 4 February 2025.

Timothy Doe
Ombudsman