

The complaint

Mr S complains that Zempler Bank Limited (Zempler) was irresponsible in granting him, and allowing him to retain, a personal current account overdraft facility, as it was unaffordable for him.

What happened

Mr S has held a personal current account with Zempler since 2015. In September 2015, Mr S applied for – and Zempler granted – a personal current account overdraft facility of £100. In November 2016, the credit limit was increased to £250.

In 2024, Mr S complained that Zempler had been irresponsible in granting the overdraft facility, and in allowing him to retain it.

In its final response, Zempler said it thought part of the complaint had been brought outside the time limits set by the regulator. During the period that fell within the time limits, Zempler said it thought it had acted fairly and reasonably.

Mr S wasn't happy with Zempler's final response, and referred the complaint to our service.

When it provided information to our service, Zempler realised there was incorrect information in its final response letter. It offered £75 by way of apology to Mr S for any distress or inconvenience caused to him by its mistake.

One of our Investigators considered Mr S's complaint. He initially upheld the complaint, saying – in summary – that he thought that Zempler should have stepped in from June 2019 as Mr S had used the overdraft facility heavily throughout for the year prior. To resolve things, our Investigator recommended that Zempler refund interest, fees and charges applied to the account from June 2019 onwards.

Zempler disagreed with our Investigator's initial opinion and provided further evidence about the steps it had taken. Having considered this information, our Investigator issued a further opinion. In summary, he said he thought Zempler had made sufficient attempts to contact Mr S, and taken reasonable steps to limit his use of the overdraft facility when it wasn't able to speak with him. Our Investigator therefore didn't uphold the complaint.

Mr S disagreed with our Investigator's further opinion. In summary, he said that he didn't think Zempler had complied with its regulatory obligations under CONC 5D, and that Zempler should have stepped in to suspend his account sooner. He said different banks had agreed to refund fees and charges to him applied to his overdraft with it during the same period.

As the case couldn't be resolved, it comes 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.

Firstly, as Zempler has consented to our service considering the complaint, I don't need to consider whether or not all of the complaint has been brought within the time limits set by the regulator.

I've considered the relevant rules and guidance on responsible lending set by the FCA, laid out in the consumer credit handbook (CONC). In summary, these say that before Zempler granted the overdraft, and prior to the credit limit increase, it needed to complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay the debt in a sustainable way, without borrowing further elsewhere. As this was an open-ended account Zempler needed to consider whether Mr S would be able to repay the debt within a reasonable period. It also had a duty to review the account regularly to ensure the overdraft continued to be affordable for Mr S.

Lending decisions in 2015 and 2016

In September 2015, Zempler granted Mr S a personal current account overdraft facility of £100, increasing the limit to £250 in November 2016. As I've explained above, prior to granting the overdraft, Zempler needed to conduct proportionate checks to satisfy itself that the limit would be sustainably affordable for Mr S.

Zempler has told us it recorded that Mr S's income was £15,000 a year, and that it saw information from a credit reference agency which showed he had relatively low levels of indebtedness elsewhere.

Given the relatively low credit limits Zempler granted to Mr S, I think the checks it conducted were proportionate and it reasonably thought that they were sustainably affordable for him.

Ongoing use of the overdraft facility

As I've explained above, Zempler also had a duty to regularly review the overdraft facility, to ensure it continued to lend responsibly to Mr S. Zempler also had a duty to monitor Mr S's usage of the overdraft, attempt contact him if he showed a pattern of repeat use (CONC 5.3.1R), and to take further steps if he didn't respond and there were signs of actual or potential financial difficulties (CONC 5D.3.2R).

Zempler has provided the transaction history for the account which show that Mr S was using the overdraft heavily and frequently – almost continuously – from mid-2018 onwards.

The statements show a mix of essential and discretionary spending until around 2020. Mr S's salary wasn't paid into the account, instead he funded the Zempler account with transfers from another account in his name. So, it appears the account with Zempler wasn't Mr S's main account.

There were periods from 2020 onwards that Mr S only transferred just enough into the account to pay the fees and interest each month. And, from 2023 onwards, the account went over limit and Mr S didn't transfer funds to bring it under limit for several months in a row.

Zempler attempted to contact Mr S about his overdraft usage by text message and phone from 2019 onwards. In summary, its messages highlighted that Mr S was paying a significant amount in interest, and invited him to contact Zempler to discuss his options.

I think this was in line with Zempler's responsibilities under CONC 5.3.1R. It doesn't appear Mr S responded to Zempler's attempts to contact him. Mr S explained to our Investigator that he was feeling overwhelmed at the time and struggled to engage with Zempler, which is understandable. But it meant that Zempler couldn't obtain a greater understanding of Mr S's financial circumstances, which would have allowed it to offer appropriate support.

Mr S shared with our Investigator that he was experiencing issues with problem gambling during this period, issues for which he's recently received support. I'm sorry to hear about the issues Mr S has faced over the last few years. I don't doubt how difficult things have been for him. But I don't think that Zempler could have realised that Mr S was experiencing issues with problem gambling from his usage of the account.

Mr S has said that his lack of response to Zempler should have been seen as a sign of vulnerability. I appreciate Mr S's position, but there are many reasons a customer may not engage with a financial business. From the information available to Zempler at the time, I can't reasonably say it should have concluded that Mr S was a vulnerable customer.

Mr S has also told us that he applied for a credit limit increase, which was declined. He thinks that applying for a credit limit increase was a sign he was experiencing financial difficulties. Applying for further credit can be a sign of financial stress, but I don't think it's fair to say it always is. And, in this instance, I can't fairly say that Zempler should have considered it to be a sign that Mr S was experiencing financial difficulties.

I've identified that Mr S was showing signs that he may have been experiencing actual or potential financial difficulties from mid-2023 onwards – when the account remained over the agreed credit limit for several months. I don't think Mr S's usage of the account showed signs he was experiencing actual or potential financial difficulties prior to mid-2023.

As Mr S hadn't responded to Zempler's attempts to contact him, and there were signs he was experiencing actual or potential financial difficulties from mid-2023 onwards, I'd expect Zempler to have taken further steps after a reasonable period of time.

Zempler took further steps by freezing the account in December 2023. I think this was a reasonable step to take, in line with Zempler's responsibilities under CONC 5D.3.2R. Mr S transferred in sufficient funds to clear the full overdraft balance in February 2024, at which point the account freeze was lifted. As Mr S hadn't discussed his circumstances with Zempler, and as he'd cleared the full overdraft balance, I think Zempler's decision to lift the account freeze.

Mr S transferred the funds back out of the account shortly after the suspension was lifted. Unfortunately the account then went back, and remained, over the agreed limit. As the account went back over the agreed credit limit, Zempler then froze it. I think this step was reasonable, and in line with Zempler's responsibilities under CONC 5D.3.2R.

I've also considered whether the relationship might have been unfair under s140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Zempler lent irresponsibly to Mr S or otherwise treated him unfairly under the scope of this complaint. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

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 S to accept or reject my decision before 28 October 2025.

Frances Young
Ombudsman