

## **The complaint**

A company which I'll refer to as 'C' complains that Zempler Bank Limited won't refund the money it lost as the result of an investment scam.

The complaint is brought on C's behalf by its director, Mr Q.

## **What happened**

In November 2022, Mr Q was approached by an investment company which I'll call 'R' to invest in its company. Mr Q undertook the relevant due diligence on the investment company and was provided with an investment contract which said R was regulated by the Financial Conduct Authority ('FCA') and would provide returns of 3.5% per month which could be tracked via an online platform.

Mr Q made an initial investment from C's account with another bank for £25,000, followed by several more payments totalling £70,000 over the next two years. In April 2024, Mr Q says he was contacted by R about C's investment and told that he needed to invest more funds to prevent an investment loss. R said that it was experiencing issues with its bank account due to diversifying into different investment types and geographical locations and C needed to make a payment to an associated company, which I'll call 'W'. At that time, Mr Q and his family were experiencing a traumatic period, and he said he felt under pressure to make the payment so he could focus on his family. So, on 21 April 2024 C made a payment for £30,000 from its account with Zempler to W's account. Mr Q believed this meant the total investment with R was now around £100,000. Throughout this time, Mr Q says he was able to see all the investments on R's online platform and was reassured about C's investment by R's account manager.

In May 2024, C tried to withdraw funds from R and was told this wasn't possible due to a banking issue, and there would be a delay of around three months for funds to be returned. In June 2024, Mr Q became aware that R had ceased trading, and the scheme C had invested in was believed to be fraudulent. Mr Q contacted the police and was told that this was part of a larger scam with around 200 victims.

In September 2024, Mr Q reported the scam to Zempler and asked bank to refund C's loss. He provided evidence of the scam and noted that the FCA had issued a public warning about R in January 2024, before C had made the £30,000 payment. Mr Q also said that he'd suffered a personal tragedy around the time of the payment and was vulnerable. So, he felt Zempler should have done more to stop him making the payment.

Zempler didn't uphold C's complaint about the scam payment. It said it wouldn't refund C's loss as the payment had been made willingly, and using a device registered to Mr Q. It also said it wasn't signed up to the Contingent Reimbursement Model ('CRM') code and therefore wasn't obligated to refund C's loss. However, it acknowledged that Mr Q had contacted it on 2 July 2024, and in error he had been told to raise a transaction dispute about the payment, rather than this being raised as a fraudulent transaction. It apologised for this error and paid £100 for the inconvenience caused to C as Mr Q believed the payment was being

investigated when it wasn't. Mr Q didn't think this was fair and asked our service to look into C's complaint.

Our investigator recommended the complaint be upheld as she was satisfied that C had been the subject of a scam. She acknowledged that C was liable for any payments it had authorised. However, she thought that Zempler should have intervened when C sent the payment as the size of the payment was out of character for the account and it was also to a new beneficiary. She also said that had Zempler looked at the beneficiary's name, it would have seen that this company had been placed on the Financial Conduct Authority ('FCA') warning list. So, she thought that if Zempler had made C aware of this, it wouldn't have made the payment, and the loss could have been prevented. Therefore, she thought that Zempler should refund C the £30,000 and add annual interest at 8% simple for the time that C had been without the use of its funds.

Zempler didn't agree with the investigators opinion and asked for an ombudsman to review the complaint. It said that C had a relationship with R that had been in place since 2022, and C knew what he was doing given his job and the investment type he was making. It also said that C was in control of what it paid and hadn't been coerced but had paid a trusted beneficiary and that this was simply a bad investment choice by C, which it shouldn't be held responsible for.

After the complaint was passed to me to decide, C made our service aware that £2,000 was recovered from the receiving bank meaning that its loss was now £28,000 rather than £30,000.

### **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 think Zempler should refund C the remaining £28,000 of its loss in full. I'll explain why.

The regulations relevant to this case are the Payment Services Regulations (the PSRs). These explain, generally speaking, that a firm is expected to process payments and withdrawals that a customer authorises in line with the terms and conditions of the account. And that account holders will be liable for payments they've authorised, and banks will be liable for unauthorised payments. I've taken this into account when considering what's fair and reasonable in the circumstances of this complaint.

Here it's not in dispute that the payment was authorised, so the starting position is that the bank isn't liable for the transaction. But this isn't the end of the story. Zempler has a duty to exercise reasonable skill and care, pay due regard to the interest of its customers and to follow good industry practice to keep customer's accounts safe. This includes looking out for payments which might indicate the consumer is at risk of financial harm and taking steps to protect its customer, proportionate to any risk it identifies. This could mean providing a warning or alert about a type of fraud or scam that a payment may be subjected to or holding a payment until it can confirm that its customer has made the payment and the purpose of the payment. These expectations wouldn't apply if a payment was legitimate, rather than as a result of a fraud or scam, so that's what I need to consider first.

I recognise that Zempler believes this complaint should be treated simply as a bad investment choice by C, and I note its comments about the length of the relationship between C and R. However, I'm not persuaded that this itself means that Mr Q cannot have fallen victim to a scam, simply because of how long he'd invested in R. On the balance of

probability, I find it likely that R intended to deceive C by acting fraudulently. I say this because C was intending to invest a certain amount of funds and receive a defined return on those funds over a designated period, and that didn't happen, C's director was given false information about R from the outset such as its FCA regulated status and a platform which appeared to provide false inflated investment returns. R's director was also arrested in June 2024, in part for falsifying R's records.

From everything that I've seen and been told, I'm satisfied that Mr Q attempted to undertake his due diligence and was reassured by the information provided by R that his investment was safe. It was only when Mr Q requested a withdrawal of some of C's investment in May 2024 that he became aware that there was an issue, when shortly after R ceased operating. Mr Q then reported the matter to the police and was made aware that more than 200 other 'investors' were in the same position. Mr Q told us that he was being subjected to pressure to increase C's investment or lose what had been invested, and the messages I've seen about circumventing banking checks and making payments to W as R's account was experiencing issues are consistent with the actions of fraudsters.

I recognise that Zempler says this is just a bad investment, and I can't completely rule that out, but I'm not persuaded that's the case. I think it seems more likely than not that R knowingly told Mr Q that C would receive a certain return on C's investment and the protection of an FCA regulated company - aware that it wasn't FCA regulated and that returns weren't being provided in line with what was shown on its online portal. Therefore, on balance, I'm satisfied C likely did fall victim to a scam and this claim is not the subject of a civil matter.

*Should Zempler have recognised that C was at risk of financial harm?*

I've gone on to consider whether Zempler ought reasonably to have done more to prevent C's loss. Taking into consideration the expectations I've set out above into account, I think Zempler should fairly and reasonably have had systems in place to look out for out of character or unusual transactions, or other signs that might indicate that its customers were at risk of fraud. So, I need to decide whether Zempler acted fairly and reasonably in its dealings with C here, and if I think it should have done more before allowing the £30,000 payment to leave E's account. Based on what I've seen, I think this payment ought to have raised concerns with the bank.

I say that because I've reviewed C's previous account activity for the year previous to the £30,000 payment, and I'm satisfied this payment was so unusual and out of character for the company. I can see that C had only made one previous large payment from the account for around £14,200, roughly three months prior to the £30,000 payment, and this had been to a recognised company and had been regarding a specific invoice. Generally, the highest payments from the account were around £3,000 to existing payees. In this case, the £30,000 payment was to a new payee, and the description noted the payment was for 'investment' which was also out of character for the account and hadn't been made previously. Additionally, C's account usually held a balance of around £20,000, and the £30,000 payment also reduced the account balance by nearly three quarters of the credit balance normally held by C, which at the time was unusual for the account. So, I think Zempler's systems should have identified that there was a risk of financial harm to C.

Zempler has to strike a balance between identifying payments that could be fraudulent and responding appropriately based on its concerns, whilst also ensuring there is minimal disruption to any legitimate payments. In this case, I'm satisfied that Zempler should've been sufficiently concerned about the £30,000 payment that it ought to reasonably have intervened to prevent the payment being sent. Had Zempler contacted Mr Q about the payment before it was released, I think it's likely that he would have explained that he was

making an investment payment to W as R's accounts had been blocked. I think this in itself would likely have raised concerns with Zempler as this is common behaviour for a scam. But if Zempler had undertaken a simple search using R's name, it would have seen that the company was on the FCA's warning list and that it was not authorised or regulated by the FCA. Had Zempler made Mr Q aware of this, I think it would likely have brought the scam to light and C's payment wouldn't have been made.

*Should C bear some responsibility for its loss?*

I've gone on to consider whether C should accept some liability for the losses it suffered due to contributory negligence. I recognise that Zempler says that C was in full control and chose to make the payments without coercion and that Mr Q knew what he was doing due to his job and the nature of the investment. However, I don't think that's a fair assessment nor do I think it would be fair or reasonable for a deduction to be made in this case.

C had made several payments to R over the two-year period and each time it had been provided with an investment contract, and online platform access where C could track its investments. Furthermore, until mid-2024 when it appears the scam came to light, R appears to have had a strong, positive online presence I've looked at the contract that C was provided and I think it was understandable that Mr Q was persuaded that R was a legitimate company and convinced that the investment was performing as it should, given that he was being provided with incorrect information through R's performance platform.

I recognise that R's request for Mr Q to make the £30,000 payment to W's account rather than R's may seem significant. However, Mr Q explained that he was going through a traumatic time when R called to request the £30,000 payment and felt under pressure to make the payment so he could focus on his family. He also says that R explained that this payment was needed to prevent the losses on his previous £70,000 investment and that the change of account didn't feel unusual given that R had said it was diversifying its investment portfolio.

Given that Mr Q had already dealt with R for several years, what he'd been told about R's future plans, and his vulnerability at the time, I'm not persuaded that Mr Q ought to have been prompted to consider whether it was safe to proceed. C hadn't attempted to remove funds from its investment prior to the date of this payment being made and Mr Q was satisfied he'd undertaken due diligence checks when he'd made the first £20,000 payment from C's account. So as far as Mr Q was concerned, the funds would be waiting in C's account with R until he needed to withdraw them, which in this case was May 2024 when Mr Q became aware of the scam. Therefore, based on all the evidence available to me, I'm not persuaded that C should be responsible for any of the loss it incurred.

*Zempler's actions after the scam was reported*

Zempler's obligations don't end once a payment has been made. There is an expectation on a sending bank to attempt to recover any lost funds once a scam has been reported. In this case, both parties agree that C's director contacted it about the scam on 2 July 2024. However, due to an error Zempler told Mr Q that he would need to raise this as a transaction dispute, instead of the bank raising this as a fraudulent transaction. This wasn't identified by Zempler until C contacted it again in December 2024 for an update, at which point Zempler contacted the receiving bank.

I don't think Zempler did enough here once it was notified of the scam. However, I haven't seen any evidence from the receiving bank to show that further funds could have been recovered, in addition to the £2,000, if Zempler had contacted it in July 2024. But in any

event, I am recommending that Zempler refund C the remaining £28,000 so C hasn't been disadvantaged by Zempler's delays in contacting the receiving bank.

### **Putting things right**

Mr Q has told us that Zempler was able to recover £2,000 from the receiving bank so to put things right I think that Zempler should refund the outstanding £28,000. I also think Zempler should pay annual interest at 8% simple from the 21 April 2024 when the £30,000 payment was made from C's account to the date of settlement.

### **My final decision**

My final decision is that I uphold this complaint. I instruct Zempler Bank limited to resolve the complaint in the manner set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 17 October 2025.

Jenny Lomax  
**Ombudsman**