

The complaint

Mrs W complains Zopa Bank Limited didn't help her recover payments she disputed.

What happened

Mrs W has an account with Zopa Bank which she opened in 2021 and a credit card.

In April 2023 Mrs W contacted Zopa Bank to say she'd used her card to make a number of payments to what she thought was a genuine, licensed online casino, but that she'd been charged more than she should have been and names of the merchants on her statement didn't match. She said she'd done some research and discovered that it wasn't a genuine, licensed online casino. She said she'd complained and was told she'd get a refund but never received it. She asked Zopa Bank to help.

Zopa Bank looked into Mrs W's claim and said that merchants shouldn't be taking payments for gambling from credit cards anymore, but that it didn't block such payments although its app did offer the ability for individual customers to do so. Zopa Bank also said that the chargeback rules didn't allow it to raise a chargeback in relation to gambling transactions. In the circumstances, Zopa Bank said it couldn't help Mrs W. Mrs W complained saying that there had been a misrepresentation – the online casino she'd made payments to was unlicensed and not legally allowed to take payments from UK customers – and there had been a breach of contract as a result of them taking more money than had been agreed and refusing to refund her.

Zopa Bank looked into Mrs W's complaint about the way it had handled her chargeback request. Having done so, Zopa Bank said that it didn't think it had done anything wrong. So, Mrs W complained to our service.

One of our investigators looked into Mrs W's complaint and said that they didn't think Zopa Bank had acted unfairly. Our investigator didn't think that Zopa Bank could have been expected to prevent the payments before they'd occurred or that there was a reasonable prospect of a chargeback succeeding. Nor did our investigator think a section 75 claim would be successful as the necessary debtor – creditor – supplier chain had been broken.

Mrs W agreed with our investigator that there was no debtor – creditor – supplier chain but said that she hadn't agreed to the payments to the merchants named on her account or received anything from them. She asked for her complaint to be referred to an ombudsman for a decision. So, it was passed to me.

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.

Mrs W's complaint concerns six payments she made using her credit card. The first payment was made in January 2023 and the rest were made in March 2023. Four of the payments were for under £100 and two of the payments were for between £100 and £150.

I'm satisfied that Mrs W could have applied a block to her card to prevent gambling transactions going out and merchants shouldn't be using credit cards to take payments for gambling transactions. I'm also satisfied that none of these payments Mrs W is complaining about were identified as gambling transactions – I've seen the merchant codes used for these payments. In the circumstances, I agree with our investigator that there's no reason why we would have expected Zopa Bank to prevent the payments before they were made. And whilst two of the payments were for over £100 – and so could arguably have been claimed back from Zopa Bank under section 75 of the Consumer Credit Act 1974, Mrs W has accepted that the necessary debtor – creditor – supplier chain has been broken here meaning that's a section 75 claim wasn't an option that would have helped here. So, what about Mrs W's chargeback claim?

Banks don't have to raise chargeback claims – but if a chargeback claim has a reasonable prospect of success then we'd normally expect them to do so. If, on the other hand, it looks clear that the cardholder will lose, then there's little sense in doing so. For instance, in a case where a cardholder might have little or no evidence to back up their claim, or they might be claiming for something the chargeback scheme doesn't cover, like a change of mind after a purchase. In this case, I do think Zopa Bank could have done more and could have raised a chargeback. I'll explain why.

The VISA chargeback rules – specifically dispute condition “12.7: Invalid Data” – allow for chargebacks in relation to transactions where authorisation has been obtained using invalid or incorrect data. In cases where an unlicensed gambling business has taken payment using the incorrect MCC on a VISA credit card – or on a VISA debit card that has had the gambling MCC block applied to it – this chargeback applies. Zopa Bank has told us that the gambling merchant code wasn't used for these transactions. So, on the face of it, these transactions appear to have been authorised using invalid or incorrect data. Zopa Bank would, however, have needed to go further than this – it would have needed to provide certification that the authorisation request would have been declined had the valid data (in this case the correct MCC) been provided – as well as an explanation about why the inclusion of valid data would have made a difference. And this is the more difficult bit. I'm satisfied that Zopa Bank would have been able to demonstrate this if Mrs W had asked for a gambling block to be applied to her card as Zopa Bank makes it clear that it stops transactions if a block is in place and the merchant is categorised with a gambling code. But she hadn't. So, I asked Zopa Bank what would have happened if the business had used the correct merchant code.

In its response Zopa Bank told me that “all gambling transactions using the correct MCC with Visa are blocked on Zopa Credit Cards by VRM (Visa Risk Manager)”. That means in this case I'm satisfied that Zopa Bank could have raised a successful chargeback in relation to these payments on the basis that authorisation had been obtained using invalid or incorrect data. Zopa Bank didn't do so.

Given what I've said, I don't agree with our investigator that Zopa Bank didn't act unfairly when it said that it wasn't going to raise a chargeback. I think Zopa Bank did and that it should, therefore, on this occasion refund the transactions in question given that the time limit for raising a chargeback on this basis is 75 days from the date the transaction was processed. I explained that I thought Zopa Bank might have missed an opportunity to raise a chargeback that had a reasonable chance of success when I asked for further information.

There is a ban on credit cards being used for gambling transactions – a ban that can be circumvented to an extent by gambling online and overseas. That might be an argument for not giving a refund should Zopa Bank be faced with a similar situation in the future. Not least because a complaint like this is a complaint that as a service we might well not uphold. I've not done that for this particular complaint – and that's because in this decision I've focussed on the circumstances of this particular complaint, and only this one.

My final decision

My final decision is that I'm upholding this complaint and require Zopa Bank Limited to refund the six payments Mrs W has complained about.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 8 February 2024.

Nicolas Atkinson
Ombudsman