

The complaint

Mr C complained because Zempler Bank Limited didn't provide a response when he reported that there were multiple transactions on his account which he hadn't authorised.

At the time of the earlier events in Mr C's complaint, his account was with Advanced Payment Solutions Limited, trading as Cashplus Bank. In July 2024, Cashplus changed its name to Zempler Bank Limited. So the case is set up in Zempler's name, but I've used the name Cashplus when referring to earlier events.

What happened

Mr C said that in July 2022, Cashplus contacted him to ask whether some transactions on his account were genuine. He said they weren't. Mr C said he complained on 18 August 2022, but didn't hear back.

Mr C contacted Cashplus again in August 2023. On 9 August, Cashplus replied that it needed clear information about the transactions Mr C wanted to report as fraudulent. It sent a statement. Mr C clarified that he wanted to report over 50 transactions between 18 May 2022 and 13 July 2022. These were to websites abroad and the total was over £11,000.

Mr C didn't receive a final response to his complaint. He contacted this service in February 2024.

We contacted Cashplus and it sent a final response to Mr C on 8 March 2024.

Cashplus's final response letter said that its first record of Mr C contacting them was on 30 July 2023, reporting a series of transactions as fraudulent. It had sent a statement to him on 9 August, but said he'd replied on 27 September with the relevant transactions highlighted. It said that on 9 November, it had decided not to refund Mr C because:

- most of the disputed transactions had been made over 13 months earlier, which meant it couldn't consider them;
- online banking information showed that Mr C had been logging on consistently throughout the period, so he'd have been aware of the transactions ;
- the statements also showed that Mr C had credited his account during this time, and if he hadn't done so, the disputed transactions couldn't have happened;
- Mr C had previously raised fraud claims, so he'd known how to make a fraud complaint.

Cashplus said its fraud team had concluded that Mr C had authorised the disputed transactions himself. It said it had written to Mr C with its decision on 9 November 2023.

It also said that a different department had carried out a review of Mr C's account in July 2022, asking about usage of his account. Cashplus's final response letter said that "*a number of transactions were queried but we note that none of the transactions you've quoted here were raised as part of that review.*" Cashplus said that on 9 August 2022 it had issued a letter giving 60 days' notice that it would close Mr C's account.

Mr C wasn't satisfied with Cashplus's final response and wanted this service to consider his complaint. Our investigator asked both Cashplus and Mr C for more information, and then issued his view.

The investigator upheld Mr C's complaint in part.

He explained that the relevant regulations, the Payment Services Regulations 2017, meant that Mr C should have notified Cashplus of the disputed transactions as soon as possible, and in any event no later than 13 months after the debit. Mr C had said he'd raised his concerns with Cashplus in July 2022, but there was no evidence of that. There was evidence showing Mr C had contacted Cashplus in August 2023. There were only two disputed transactions within the 13 months prior to that. They'd both been for £205.25, to the same online merchant, and had taken place on 11 July 2022.

The investigator explained that although Cashplus had evidenced that Mr C had logged onto his account just after the disputed payments were made, it hadn't evidenced that Mr C had authorised the payments. He'd asked Cashplus for this evidence but it hadn't provided it.

So the investigator said that Cashplus should refund the total of £410.50, with £12.28 which it had charged him for foreign exchange fees on the two transactions. And he said that Cashplus should refund the interest applied on these, and 8% interest on the £410.50 and £12.28. If Cashplus had chased Mr C for the balance for these, it should stop any further action. And it should remove any adverse information it had put on Mr C's credit file about these transactions. Finally, he said Cashplus should pay Mr C £50 compensation for the distress and inconvenience caused.

Cashplus didn't accept the investigator's view. It didn't give any further reasons, but asked for an ombudsman's decision.

My provisional findings

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint.

Timescales relating to the disputed payments

In my provisional decision, I explained that there are regulations which govern disputed transactions. The relevant regulations here are the Payment Services Regulations 2017. In general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them.

Regulation 74 of the Payment Services Regulations 2017 also says:

'A payment service user [here, Mr C] is entitled to redress only if it notifies the payment service provider [here, Cashplus] without undue delay, and in any event no later than 13 months after the debit date, on becoming aware of any unauthorised or incorrectly executed payment transaction.'

So Cashplus only had to investigate the disputed transactions which took place within 13 months before Mr C raised them with Cashplus. Mr C said that he did so in July 2022, but

there's no evidence of that. I've listened to a phone recording between Mr C and Cashplus in July 2022, where Mr C rang to ask why his account had been blocked. Cashplus told him it was because he hadn't replied with information it had asked relating to his tax return and various other information. There's no mention on that call about a dispute about transactions. The first evidence I've seen about when Mr C first disputed transactions is in August 2023, as I've set out above.

There were only two disputed transactions within the 13 months before August 2023. So these are the only two which can still now be considered, not any of the earlier ones. The two which I looked at closely took place on 11 July 2022, at 5.03 pm and 5.08 pm, and were to an online merchant abroad. They were both for £205.25 and there was a £6.14 foreign exchange fee for both.

Who authorised these two disputed transactions?

As I've set out above, the Payment Services Regulations 2017 say that in general terms, the bank is liable if the customer didn't authorise the payments, and the customer is liable if they did authorise them. So what determines the outcome here is evidence about the authorisation of the payments.

Our investigator had asked Cashplus for evidence to show how the two payments were processed.

Cashplus sent screenshots which showed that Mr C's card was used for both payments. But this isn't the necessary technical evidence linking Mr C to the payments. I could see that the investigator explained to Cashplus what was needed, but Cashplus didn't provide it.

As Cashplus didn't provide evidence to show how the payments were authenticated and authorised, it hasn't met the requirements of the Payment Services Regulations 2017. This means that Mr C's claim for these two payments totalling £410.50, with the associated foreign exchange charges totalling £12.28, succeeds, making a total of £422.78. Cashplus also charged Mr C a monthly interest fee in both August and September 2022, and these shouldn't have been charged either.

Putting things right

I found that Mr C shouldn't have been charged for the two disputed transactions and their foreign exchange fees, or the associated monthly interest fees. So I'd normally order that these sums should be refunded to Mr C.

But here, when Cashplus closed Mr C's account, it first wrote off the two monthly interest charges for £27.87 and £29.40. It then wrote off the remaining overdrawn balance of £455.18. This was more than the £422.78 total for the two disputed transactions and associated foreign exchange fees.

This meant that Mr C hadn't ultimately paid for the two disputed transactions, foreign exchange fees, or monthly interest charges.

This means it wouldn't be fair or reasonable for this service to order Zempler to refund Mr C, because he had no financial loss. This is also set out in the rules which govern this service (known as DISP, section 3.7.2).

Similarly, as he didn't pay these sums to Cashplus, I didn't order 8% interest for the time he was without his money.

In the provisional decision, I said that there are, however, two outstanding areas where Zempler should put things right.

It's likely that Cashplus recorded adverse credit information about Mr C's account being in debit to the credit reference agencies, because financial organisations have a duty to report accurate information about accounts. So I said that I intended to order Zempler to correct this so that Mr C's credit reports don't show that he owed Cashplus for the disputed transactions, foreign exchange fees or monthly interest.

I also considered the customer service which Cashplus provided to Mr C. It didn't respond to Mr C's August 2023 complaint until after Mr C contacted this service. When he did, we asked Cashplus for information, and it was only after that that it sent Mr C its final response in March 2024. This was outside the timescales set by the Financial Conduct Authority (FCA) for registered organisations to respond to complaints. In its March 2024 final response, it said it issued a decision in writing to Mr C on 9 November 2023. But it hadn't supplied a copy of this to us.

So I provisionally found that the customer service was poor, and Zempler should pay Mr C £100 for this. I said that if Zempler evidenced, by the date for responses to this provisional decision, that a final response letter was sent to Mr C within the Financial Conduct Authority's deadline of 8 weeks of receiving Mr C's complaint, I would reconsider this.

Responses to my provisional decision

Mr C didn't reply to my provisional decision.

Zempler said that Mr C hadn't made a complaint in summer 2023. It said that Mr C had only used its Complaints email address at that time because that was the only one Zempler advertised on the website. Zempler argued that Mr C hadn't expressed dissatisfaction, so it wasn't taken as a complaint.

Zempler said that Mr C had had back and forth correspondence with the fraud team, to clarify the specific transactions. And it said that the 9 November letter hadn't been a final response letter, but the fraud team's decision to reject Mr C's claim.

So Zempler said that there had been no poor service, so there shouldn't be a payment to Mr C for that.

Zempler still didn't send us a copy of its 9 November letter to Mr C, which our investigator had asked for too. I asked Zempler again for this, and it sent it. The 9 November letter to Mr C had said that it was writing regarding his fraud claim. It said that it had now completed its investigation, and regretted to inform Mr C that it was unable to refund him. It said this was because "*the account has been accessed via online servicing during the time of the fraud.*" The letter told Mr C that he should read fraud prevention awareness information which had been sent to Cashplus customers.

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.

I've carefully considered Zempler's response to my provisional decision, both regarding its argument that Mr C hadn't complained in 2023, and what it said in its November 2023 letter.

A complaint is defined within the rules as *"any oral or written expression of dissatisfaction, whether justified or not, from, or on behalf of, a person about the provision of, or failure to provide, a financial service or redress determination, which alleges that the complainant has suffered (or may suffer) a financial loss, material distress or material inconvenience."*

I consider that Mr C did express dissatisfaction which counted as a complaint. First, Zempler itself accepts that in July 2023 Mr C emailed an address "*complaints@cashplus.com*." I'm not persuaded by Zempler's argument that this was the only address available on the website, so it wasn't a complaint.

I consider that Mr C did complain in summer 2023. But in any case, Zempler's own customer contact records show that from October 2023 onwards there are multiple notes along the lines of *"Email from [name]. Please advise we can not discuss account specific information via email."* And there is a note on 10 November saying *"Email sent to call but if [name] does respond we cannot reply as cannot discuss account specifics via email."*

This tallies with Mr C's own version of what happened, as he said he contacted Cashplus many times, but they wouldn't accept emails, and he didn't like phoning because they refused to transfer him to the right department, plus there would be no evidence to prove what he'd said.

So I don't agree with Zempler that Mr C didn't complain until 27 February 2024. I find that Mr C did complain to Zempler on multiple occasions, before November 2023 and afterwards. I consider this was both about the outcome of the fraud investigation and about its customer service in terms of options for communication.

Under the rules about complaint handling, a delay from at least November 2023 to 8 March 2024 when Zempler did send a final response letter, warrants compensation.

So I'm not persuaded to change my mind about awarding £100 compensation for distress and inconvenience which was caused to Mr C by the failure to comply with the timescales set by the Financial Conduct Authority (FCA) for registered organisations to respond to complaints.

My final decision

My final decision is that I uphold this complaint in part.

- This service does not have jurisdiction to consider Mr C's complaint about disputed transactions prior to July 2022, because there's no evidence he raised them within 13 months of the debits;
- I uphold Mr C's complaint that he shouldn't have been debited with the two disputed £205.25 payments on 11 July 2022, or the associated foreign exchange fees of £6.14 per transaction, or the associated monthly interest charges of £27.87 in August 2022 and £29.40 in September 2022. The total of this is £422.78 for the disputed transactions and foreign exchange fees, and £57.27 for the monthly interest charges. However, there is no refund due to Mr C for these amounts, because when Cashplus closed Mr C's account, it wrote off more than this. So Mr C never paid these amounts and didn't suffer a financial loss.

I order Zempler Bank Limited to:

- Correct any adverse information which Cashplus or Zempler recorded against Mr C in relation to the amounts I've set out above;

- Pay Mr C £100 compensation for the distress and inconvenience it caused him through poor customer service.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 24 October 2024.

Belinda Knight
Ombudsman