

The complaint

A limited company, I'll refer to as 'S', complains that Zempler Bank Limited ("Cashplus") didn't refund fraudulent transactions in a timely manner – leading to fines from HMRC.

What happened

In January 2024 S's director was abroad when he was the victim of a scam. He attempted to purchase a lighter from a vendor at the beach using his card, but was told there was a problem with the machine after he'd entered his PIN. S's director says he asked for his card back but was initially refused, and then surrounded by a gang who made threats of violence. The vendor subsequently managed to put through two extra transactions, both for the same amount of £3,262.39.

S's director called Cashplus to cancel his card and request a chargeback. The incident was also reported to the police, with the report saying that S's director suspected the gang had a 'spotter' who'd previously seen him enter his PIN, enabling them to complete the payments.

Cashplus investigated the fraud claim and didn't refund the transactions. The reasons given were that S still had the card which made the transactions in its possession, and the correct PIN was entered to verify them. S raised a complaint about the decline, telling Cashplus that he wasn't able to pay what was owed to HMRC until the money was returned. He also sent in a copy of the police report, as requested. But S says Cashplus didn't respond within the eight week timeframe set out by the regulator. So the complaint was referred to our service for review at the end of April 2024.

In May 2024 Cashplus sent out a final response stating it had refunded both the disputed transactions. It also credited the account with £50 as a gesture of goodwill for the service issues encountered. Cashplus acknowledged it had taken too long to review the police report and revise its outcome. S still wanted our service to look into things, as it felt more compensation was due on account of the anxiety caused to its director. It had also incurred fines from HMRC which it thought Cashplus should cover.

One of our investigator's reviewed everything and thought Cashplus had now resolved the fraud claim fairly, by refunding the transactions. He also thought the compensation amount was fair for the delay in reviewing the additional evidence sent. The investigator had asked for more details about the HMRC fines, but hadn't heard anything back. Following the view, S sent in letters showing the fines incurred were for the late submission of its taxes, and explained it didn't agree the compensation was reasonable.

The investigator requested evidence that the delay in the fraud refund had resulted in S not being able to pay its taxes on time – as it looked like there were enough funds in the account, after the fraud, to cover the bill. But he didn't hear back from S, so maintained his position that the offer was fair. As the complaint couldn't be resolved at the first stage of our process, the matter was passed to me for a final decision.

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've decided not to uphold S's complaint. I appreciate that answer will be disappointing for S's director, who was no doubt left worried by the ordeal abroad and the prospect of not getting the stolen funds back. But I haven't seen enough evidence to persuade me that delays in Cashplus' fraud investigation resulted in the HMRC fines, or that it caused a discernible impact to S (rather than to S's director personally). I've explained my rationale below.

Cashplus' final response to the complaint said it agreed with the outcome of the fraud investigation, based on the evidence it had at the time. It argues it only had the information it needed to overturn that decision when the police report was received, though it has accepted there was a delay in reviewing that evidence. However, it seems S's director was clear that he'd reported things to the police when first notifying Cashplus of the loss. So, if all Cashplus needed to see in order to provide a refund was the police report, then it should have just asked for it, rather than rejecting the claim. But given Cashplus has since provided a refund to S, of both disputed transactions, I don't need to consider the fraud aspect further.

Cashplus has offered £50 compensation for requesting the police report when it already had it, and for the delay in reviewing the outcome of its fraud claim. I've no doubt the wait was an anxious and frustrating time for S's director. But S, the limited company, is the bank's customer on the account and the eligible complainant here. So I'd need to see that any mistakes disrupted the operations of the company itself.

S can't be distressed, and as S's director isn't the account holder or complainant I can't award for any impact to him personally. I know that chasing the outcome of the claim would have wasted the director's time, but not to the extent that I would have expected it to have a discernible effect on S. I also haven't seen any evidence that being without the funds for longer has been resulted in any significant cashflow or operational problems. The only alleged financial losses are the HMRC fines.

One fine, issued on 13 February 2024, resulted from S not submitting its tax return for the year that ended on 5 April 2023. I'm not sure why the money being stolen would have prevented the accounts from being filed with HMRC. Payment is also usually due nine months and a day after the end of the accounting period. If that ended on 5 April 2023 then the tax bill was potentially overdue by the time of the incident in January 2024. So, without further corroborating evidence that S was unable to meet the HMRC deadline for submitting its return due to Cashplus' delays, I can't award it the fine.

The second fine, issued on 11 May 2024 and due on 7 April 2024, was for late payment of VAT, and was calculated as a percentage of what was owed. The statements show there were enough funds left in the account following the fraud to have paid what was owed. So it's unclear what happened after that. While I appreciate that having the extra funds available when the bill was due would have helped, it's not clear that any delay from Cashplus' meant the tax couldn't be paid on time (and directly caused the fine). So, without further evidence demonstrating the link, I can't award the second fine to S either.

We asked S for any evidence or explanation for how the delay in reviewing the fraud outcome resulted in both fines – and none was forthcoming. That means I've reached the same outcome as the investigator, and find that Cashplus has fairly resolved the complaint.

My final decision

My final decision is I don't uphold S's complaint about Zempler Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask S to accept or reject my decision before 26 October 2024.

Ryan Miles
Ombudsman