

## **The complaint**

A company I'll call D complains that Zotto Limited (Zotto) unfairly blocked its account and withheld the account balance of £30,438.58.

To put things right, D wants Zotto to release its funds and pay compensation.

D is represented by one of its directors, Mr M.

## **What happened**

In 2022, Zotto placed a block on D's account meaning D couldn't access the funds in its account. Zotto refused to release the funds so D made a formal complaint on 10 August 2022.

On 11 August 2022, Zotto told D it had settled D's account the day before but D noted Zotto had paid just over £900 of a balance of over £30,000. Zotto then said it would "settle" D's account every Wednesday and Friday and that it was doing its best to "regularize the settlement" of D's account. Zotto didn't explain why it continued to withhold D's funds and didn't set out any details of when the full account balance would be released.

On 14 September, Zotto then told D that it could only clear funds for a terminated account, and that it intended to withhold D's funds for 180 days as security for any chargebacks received. The following day, it told D it had frozen other of its customers' accounts over concerns those customers were selling illegal products. Zotto made no suggestion that it held such concerns about D (and later told our service it had no such concerns about D) and said its audit of D's account would be completed on 3 October 2022, at which point it would start releasing D's account balance at the rate of £5,000 per day. It again gave no reason for its actions.

On 13 October, Zotto then told D it was willing to settle D's account, but only if D started using Zotto to receive payments again. D was understandably not prepared to do so and, ultimately, Zotto failed to release D's money as it had promised to do, so Mr M brought D's complaint to our service. Shortly after, on 16 November 2022, Zotto closed D's account without notice, but again failed to release D's funds.

Our investigator asked Zotto to explain why it had continued to withhold D's funds, and sought evidence to support Zotto's claim that D had received a high level of chargebacks.

Zotto provided evidence of just seven chargebacks totalling £612.39 and spanning from April 2021 to September 2022. Set against the account balance withheld of over £30,000, that represented a chargeback rate of around 2%. Our investigator said she had seen no justifiable reason to withhold the full balance of £30,438.58 and felt it should have withheld just £300. To put things right, she felt Zotto should pay D simple interest at the rate of 8% on the withheld fund, as well as compensation of £400.

D accepted our investigator's findings, but Zotto didn't. It accepted it shouldn't have withheld the full balance, but said it was not for our service to tell Zotto how much it should withhold

and that Zotto had an unqualified right to determine what funds it should hold after termination of a customer's account. It said because of its position, it rejected the award of interest and compensation.

Zotto had claimed it was contractually entitled to withhold D's money for 180 days. But despite that timeframe passing long ago, and despite Zotto acknowledging that it shouldn't have withheld such a high proportion of its customer's funds, Zotto failed to release any further payments after our investigator issued her findings.

Because no agreement could be reached, the matter came to me to issue 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.

When Mr M brought his complaint to our service, he said he felt Zotto had knowingly and repeatedly lied to him about the status of the account and why it was withholding D's money. He was concerned Zotto was misusing D's funds and that Zotto's explanations of the situation to D were intended to hide its incompetence or negligence.

And, having reviewed the evidence, I understand entirely where Mr M is coming from. Zotto's primary position was that it withheld D's funds because of a concern that it would have to settle chargebacks. However, its actions and the evidence I've seen do not support that position.

Firstly, in communications with D, Zotto made various contradictory statements. It initially said it would settle the balance of D's account every Wednesday and Friday and that it was doing its best to "regularize the settlement" of D's account. Zotto gave D no explanation of what that meant, or why it was only prepared to release D's money in tranches.

Then, on 14 September 2022, it said it intended to withhold D's funds for 180 days as security for chargebacks, before saying it would release D's money at the rate of £5,000 per day, before later saying it would settle D's account if D started receiving payments through Zotto again.

On 15 September 2022, Zotto also said that its audit would be complete on 3 October and that it would release funds after that date. And I find it unusual that a financial business could commit to releasing funds at the end of an audit, before the audit had been completed.

Zotto's scattergun approach is not consistent with what I would expect to see from a financial institution seeking to protect a legitimate interest, such as guard against future chargebacks. And its actions suggest to me that it had an ulterior motive.

After D brought its complaint to our service, it became apparent that Zotto was in financial difficulties. And in fact, a petition to wind-up Zotto was entered on 21 September 2023, which was followed by a winding-up order on 24 November 2023 and the appointment of liquidators on 8 December 2023.

When set against the background of apparent financial difficulties, I would strongly question whether Zotto's actions were taken in good faith. And Zotto's promise to release funds if D started using Zotto to receive payments again is particularly concerning and has the feel of Zotto holding D's funds to ransom.

Zotto gave no plausible explanation for its actions to D, nor to our service during our investigation. Zotto did say that, at the forefront of its review was the “unusually high level of chargeback disputes” raised against D by its customers. But I don’t accept that was their true motivation. When asked to provide evidence of the “unusually high level” of chargebacks, Zotto sent in evidence of just seven chargeback requests it had received over a 17-month period and totalling just £612.39 (i.e. approximately 2% of D’s account balance). And only three of those had been raised in 2022, before Zotto blocked D’s account.

For comparison purposes, the total value of the three chargebacks Zotto says it received before the block in 2022 was £276.39. And the total value of the three chargebacks it says it received in the preceding year was £286.50. So, the frequency of chargebacks hadn’t increased at all, and the value of the chargebacks in 2022 before the block was actually marginally lower than 2021.

For completeness, in the 15 months since the block, Zotto says it has only received one chargeback – in September 2022 for the sum of £49.50.

And even if I were to accept that Zotto had simply acted with incompetence in assessing the risk of chargebacks, it didn’t release the funds after the 180-day period had expired, which I take as a further indication that it had no intention of doing so all along.

It’s for all those reasons that I suspect Zotto wasn’t acting in good faith when it blocked D’s account and continued to withhold its funds.

With that being said, it is not our service’s role to punish a firm or to make a finding of wrongful activity. Simply, my role in this case is to assess the evidence provided by both parties and assess whether or not Zotto has treated its customer fairly and reasonably. And if it has not, to award D compensation. So, while I share Mr M’s concerns about Zotto’s actions, my decision focusses only on whether Zotto treated its customer fairly and reasonably, and if not, what loss D suffered as a result.

Zotto claims its right to withhold D’s funds for 180 days is unfettered, but our service is free to decide whether Zotto has acted fairly and reasonably in applying its terms and conditions in a given circumstance. And, giving Zotto the benefit of some considerable doubt that it was acting in good faith, I’ve looked to see if its decision was fair and reasonable. Having done so, I’m not persuaded that it was.

There was no increase in the quantity or value of chargebacks leading up to the account block, so Zotto’s rationale doesn’t stand up to scrutiny. That being said, based on the evidence Zotto submitted, there was clearly a risk of *some* chargebacks being received. And I agree with our investigator that it would have been reasonable for Zotto to withhold £300 to cover that risk, given that level would have provided sufficient cover for the last two years and given there was no compelling evidence to suggest an increased risk to Zotto.

Because of what I’ve said, it follows that Zotto must release D’s balance in full immediately and pay compensation for the losses D suffered. Based on what both parties told our service, our investigator stated the closing balance was £30,438.58. And given neither parties challenged that figure, I accept it to be the correct balance Zotto should release to D.

In assessing the loss D suffered because of Zotto’s errors, I’ve looked at what Mr M told our investigator. He said D’s ability to buy stock was impaired because it had less available cash, and that it had to withdraw a sponsorship deal it had agreed with a local rugby club because it couldn’t afford to follow-through owing to Zotto’s actions.

D wasn't able to evidence the amount it thought it had lost out on as a result of Zotto's failings. And proving claims such as this is always difficult. But I accept that being denied access to over £30,000 would have caused D some level of financial loss. And I take the view that simple interest at the rate of 8% on the balance unfairly withheld represents fair compensation for that loss.

As to the period for which Zotto must pay interest, our investigator felt that should start from the date Zotto closed D's account. Given my suspicion that Zotto's actions were not motivated by its contractual rights, there is an argument that the date should start earlier. But, I've spoken with Mr M who has agreed to accept the date our investigator suggested. And I'm satisfied 16 November 2022 is not unreasonable or unfair to Zotto given Zotto's terms of business say it can withhold funds for 180 days and given Zotto had started withholding fund earlier than that date.

Given that Zotto has not released D's funds, interest shall continue to accrue until the date of settlement.

I also accept that D would have experienced a fair degree of inconvenience and an element of damage to its reputation as a result of Zotto's actions. D's director, Mr M, had his attention diverted away from D's day to day business for an extended period of time, owing to Zotto's failings and its poor service, and withdrawing from a sponsorship deal at the 11<sup>th</sup> hour will have caused a degree of damage to D's reputation. Our investigator awarded £400 in total in this regard and, for the reasons I've set out above, I'm satisfied that represents fair compensation.

### **My final decision**

My final decision is that Zotto Limited must:

1. Release D's full account balance of £30,438.58 immediately;
2. Pay D simple interest at the rate of 8% on the above sum from 16 November 2022 to the date it releases the account balance to D; and
3. Pay D £400 in respect of the inconvenience and damage to reputation it caused D to suffer.

The above sums are payable immediately upon D accepting this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 12 January 2024.

Alex Brooke-Smith  
**Ombudsman**