

The complaint

Mr M complains about Zopa Limited holding him liable for a loan he says he didn't take out.

What happened

In July 2019, a loan was taken out in Mr M's name with Zopa for £10,000.

Mr M says he didn't take this loan out. Mr M had a close friend, who I'll refer to as Mr X. Mr X owned a business and approached Mr M for help. Mr M explained that Mr X told him that he and his business partner had an issue with spending limits, so asked Mr M if he could transfer money into his account and Mr M to pass them on. Mr M agreed. Mr M explained to our service that he trusted Mr X a lot. He was a close friend of his and supported his family while Mr M was in hospital.

Mr M received £10,000 into his account and transferred £9,500 out in three separate transactions. £500 was retained by Mr M in his account.

In October 2019, Mr M noticed that two payments had been made out of his account to Zopa. He didn't know what the amounts were for – so he contacted Zopa to dispute them. It appeared an unauthorised individual took out a loan in Mr M's name.

Mr M initially told Zopa he didn't know who took out the loan. Mr M has explained to our service that he asked Mr X about it and that resulted in him losing contact with him. Mr M didn't have any concrete evidence to confirm it was Mr X who took out the loan, but given the circumstances surrounding what actually happened, it seems more likely than not, that it was Mr X. Mr M reported the issue to Action Fraud and the Police.

Zopa investigated things but didn't agree to write off the loan. They said they'd carried out sufficient checks and as they had no evidence Mr M's bank account had been compromised, they thought he must have been aware of the loan because he'd transferred the loan funds on to somebody else. Zopa held Mr M liable for the loan and the repayments.

Due to non-repayment, the loan defaulted, and this was reflected on Mr M's credit file. Mr M said this caused him severe detriment - and has continued to be an issue for him by having a mortgage application declined in 2021 because of the information recorded by Zopa.

Our investigator upheld Mr M's complaint. He thought that some of the information included on the loan application was incorrect, and Mr M's story about what had happened was consistent. Our investigator thought Mr M should have been more cautious when offering to help Mr X, but on balance thought he was a victim. Our investigator asked Zopa to remove the default and any adverse credit from Mr M's credit file, write off the loan amount and refund Mr M any payments he'd made towards the loan – less the £500 which Mr M kept.

Zopa didn't agree. So, the complaint has been passed to me to decide.

In November 2021, I let Zopa know my initial thoughts in an attempt to resolve things informally. I explained that I hadn't seen enough evidence to satisfy me that they'd carried

out sufficient checks. I noticed the loan application stated Mr M was in full time employment earning £28,000 a year – but Mr M had provided evidence to show he was at University at the time.

Zopa responded and said Mr M's personal details which were stated on the application was correct, and the income passed the credit reference agency checks. They thought they'd carried out enough checks and therefore didn't agree to write off the loan.

Mr M also provided me with further evidence to show that his initial mortgage application was declined because of the information on his credit file in relation to this loan.

In December 2021, I issued a provisional decision. In it, I said;

Did Mr M apply for the loan?

Section 83 Consumer Credit Act 1974 outlines that a debtor under a regulated consumer credit agreement shall not be liable to the creditor for any loss arising from the use of the credit facility by another person not acting, or to be treated as acting, as the debtor's agent. In simple terms, Mr M can't be held liable for a debt that another person, not acting on his behalf, took out.

Taking the above into consideration, I must first conclude—on the balance of probabilities—whether the loan was applied for by Mr M, or an agent acting on his behalf.

Based on the evidence I've received I think it's more likely than not, Mr M didn't apply for the loan himself. I say that because:

- While the loan application held Mr M's correct personal details such as his date of birth, this information would have been easily accessible – especially to somebody Mr M classed as a close friend.
- The employment and income information stated on the loan application was incorrect and Zopa haven't been able to supply any substantial evidence to show this passed their checks.
- I've seen evidence from the University Mr M attended that he was a student in full time education at the time the loan was taken out – and therefore I'm more persuaded that the salary and employment information stated on the application was incorrect. I also haven't seen any evidence of a salary income on Mr M's bank statements.
- Mr M has given a consistent and persuasive version of events of how he came to receive the money in his account. Mr M was expecting money to be paid into his account so he could help his friend, Mr X, with his business payments. I have no reason to disbelieve Mr M's version of events.
- Mr M transferred majority of the funds on shortly after receiving them into his account. This makes his story more plausible. I say that because in light of the reasons he was given by Mr X for making the payments, I'm persuaded that Mr M wouldn't have sent the loan funds to the fraudster had he not received it into the account first.
- Mr M explained that Mr X said he could keep some of the money as a thank you – and Mr M did keep £500 of the loan funds.
- Zopa have confirmed that they didn't send a welcome letter, or anything similar to Mr M's home address. The phone number and email address used on the application didn't belong to Mr M so I'm satisfied Mr M wouldn't have been aware a loan had been taken out in his name.
- As soon as Mr M did become aware of the fraud, he contacted Zopa. Mr M also raised a case with the Police and Action Fraud. These are actions I would expect to

see of somebody who had fallen victim to identity theft.

Based on all of the evidence I've received, I think it's more likely than not an unauthorised individual applied for the loan in Mr M's name. They were able to do this due to being a close friend of Mr M and knowing a lot of his personal information. Mr M also supplied his bank details to his friend, Mr X, and I'm more persuaded that Mr M's testament that he thought he was helping a friend was true. Mr X was a somebody who Mr M trusted. This isn't unfamiliar when dealing with complaints involving fraud.

Considering all the above information, I'm satisfied that Mr M neither applied for, nor agreed to, the loan in question. I do recognise he benefited from some of the loan funds - £500 and I therefore find it reasonable that he is held liable for this part of the loan only considering the relevant legislation.

How should Zopa put things right?

Zopa should put Mr M back into the position he would have been in, had the loan not been approved. While I recognise Zopa shouldn't be held liable for Mr M trusting Mr X, I think they should be held liable for not carrying out sufficient checks. If Zopa had investigated and verified Mr M's income or employment details, I think it's unlikely they would have approved the loan – and therefore Mr M wouldn't have found himself in this position.

Because of that, I think Zopa should remove any adverse data from Mr M's credit file – including removing the default registered against him in relation to this loan. Zopa should also write off the remaining loan amount and refund Mr M any payments he'd made towards it – less the £500 which Mr M retained himself. To recognise the loss of the use of these funds, Zopa should also add 8% simple interest to the amount they refund Mr M. This should be calculated from the date the money was taken from Mr M up to the date Zopa refund him.

The impact on Mr M has been ongoing. Mr M has provided evidence to show that an initial mortgage application was declined in August 2021 because of the information held on his credit file by Zopa. Having considered this evidence, I'm satisfied that Mr M would have been approved for a mortgage which held monthly payments of £739.93 based on a two-year fixed term with a total amount of £1096 in fees, had it not been for the adverse information held by Zopa. The mortgage Mr M was approved for, consisted of monthly payments of £1,016.33 on a two-year fixed term, with a total amount of £1,659 in fees. The total difference in cost of the two mortgages totals £6,633.60 more in monthly payments across two years, and a total £563 extra in fees.

The mortgage in question was a joint mortgage – and therefore, I can only reasonably consider half of these excess costs when deciding how Zopa should put things right. Therefore, I think Zopa should reimburse Mr M half of these costs to reflect his share of the mortgage payments. I therefore think Zopa should pay Mr M a total of £3,598.30. I also think Mr M is owed some compensation for the distress and inconvenience this situation has had on him. I'm likely to suggest a compensation payment of £1,000 to be paid in addition to what I have suggested above. I consider this is a fair reflection of the distress caused to him by Zopa continuing to hold him responsible for a loan somebody else took out without his permission, commonly referred to as identity theft. So, in summary, I thought Zopa Limited should:

- Remove any data from the credit reference agencies in relation to this loan,
- Write off the remaining amount of the loan,
- Reimburse Mr M any monies he has paid towards the loan, minus the £500 which he benefited from,

- Calculate 8% simple interest on the amount they refund Mr M in relation to the amount paid towards the loan. They should calculate this from the date the money was taken to the date they refund.
- HM Revenue & Customs requires Zopa Limited to withhold income tax from the above-mentioned interest. Zopa should give Mr M a certificate showing how much is taken off if Mr M asks for one.
- Pay Mr M £3,598.30 to recognise the impact this situation has had on his mortgage payments.
- Pay Mr M £1,000 compensation for the distress and inconvenience caused.

Mr M responded to my provisional decision. In summary, he said he was largely in agreement with the recommendations but wanted the impact this overall situation had on his studies to be considered too. He feels this whole ordeal led to him underachieving in his most important year of his studies.

Zopa responded and had some additional questions. In particular they wanted to know why Mr M didn't hold any evidence of his relationship with Mr X, and they wanted to see the evidence that Mr M's mortgage rate had been affected solely due to the Zopa loan in question. In response to this, Zopa pointed out that the concerns regarding Mr M's credit file which resulted in a higher interest rate being given for his mortgage, referred to the number of searched Mr M's mortgage advisor's conducted and an arrears notice on a different financial commitment. In summary, Zopa didn't agree they should financially contribute to Mr M's mortgage or pay compensation.

I raised these issues with Mr M directly. He said that he and his partner had a mortgage advisor and the only reason multiple searches were carried out when applying for the mortgage was to see which lender would allow a mortgage to be approved with a fraudulent loan on his file. He also explained the arrears notice related to an error made by his bank which had elapsed by the time he applied for the mortgage. Mr M didn't have any additional evidence to share.

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 still consider the complaint should be upheld. I've explained further below.

I appreciate Zopa have concerns about the lack of information Mr M holds in relation to his relationship with Mr X. I can appreciate why they feel this way but it's not unusual for individuals to expect somebody who they class as a close friend would defraud them in this way. And therefore, I can appreciate why Mr M doesn't hold excess information about Mr X's actions at the time – and that's because Mr M didn't suspect anything was amiss. Having said that, Mr M has provided our service with a reliable and realistic testimony – and this has been consistent throughout the lifetime of the complaint. Where evidence is missing, as it is in this case, I'll need to make my findings based on what I think to have most likely happened in the circumstances. In order to uphold it, I must be persuaded that, on balance, it is more likely than not that Mr M didn't apply for the loan himself – or allow a third party (likely, Mr X) to apply for it on his behalf. I've explained in my provisional decision and above why, based on all of the evidence I've received, I think it's more likely than not an unauthorised individual applied for the loan in Mr M's name. As neither party has supplied any additional evidence in support or against this finding, I see no reason to depart from it. I'm therefore satisfied that Mr M didn't apply for the loan himself – or allow somebody else to apply for it on his behalf. I think if Zopa had carried out sufficient checks, it's unlikely the loan would have been approved.

Zopa raised an argument in relation to the way they should put things right. I thought Zopa should pay Mr M money to recognise the impact this overall situation had on his mortgage payments. Zopa rightly pointed out that the mortgage was a joint one – and therefore, Mr M's sole credit couldn't be considered on its own for the overall mortgage rate. Mr M has explained his partner had an exemplary credit rating – and I have no reason to disbelieve him. This is also supported by the evidence Mr M has supplied to explain why an increased mortgage rate was entered into. This evidence only relates to Mr M's credit – and the discrepancies linked to Mr M, and therefore I'm persuaded that Mr M's partner's credit isn't relevant. I've also considered the redress for the mortgage payments to be only 50% to reflect Mr M's half of the mortgage payments only.

I've also thought about the numerous searches carried out by Mr M's mortgage broker – and the arrears status held on Mr M's credit file. Mr M has explained his mortgage broker carried out numerous searches to try and find a lender who would offer the mortgage despite the information held by Zopa. I'm satisfied, based on the evidence I've received and the individual circumstances of this complaint, that is correct. However, I've also thought carefully about the arrears status. Mr M has explained that he had a letter from his bank to confirm the arrears notice was caused by an error with them refunding a payment and it would have elapsed by the time Mr M applied for the mortgage. Unfortunately, Mr M hasn't been able to provide me with a copy of this letter. He's explained it was a physical letter and he didn't obtain an electronic copy. I consider it is unlikely for a mortgage rate to be increased based on one payment in arrears for a communication company. Therefore, based on the circumstances of this complaint alone and the evidence I've seen, I'm more persuaded that the mortgage rate has been affected by the default and loan recorded by Zopa.

Putting things right

Overall, I have seen no compelling evidence to support that Mr M applied for the loan himself or authorised it to be taken out in his name. It appears the fraudster took advantage of Mr M's trust, and the lack of verification checks carried out by Zopa and was able to apply for the loan without Mr M's knowledge. This is commonly referred to as identity theft. Because of that, Zopa should write off the debt balance and clear all information relating to it from Mr M's credit file.

Zopa have continued to chase Mr M for the debt despite his arguments against it. I think this has caused a significant amount of stress and anxiety, especially during Mr M's studies – in addition to the distress caused by the fraudster in taking out the loan in the first instance. The impact this situation has had on Mr M has been ongoing – with his mortgage payments being significantly affected. While I appreciate this isn't directly Zopa's fault, I consider if they carried out sufficient checks when the loan was applied for, Mr M wouldn't have found himself in this position. And therefore, I consider Zopa are responsible for compensating Mr M further.

My final decision

My final decision is that I uphold this complaint.

I direct Zopa Limited to:

- Remove any data from the credit reference agencies in relation to this loan.
- Write off the remaining amount of the loan.
- Reimburse Mr M any monies he has paid towards the loan, minus the £500 which he benefited from.

- Calculate 8% simple interest on the amount they refund Mr M in relation to the amount paid towards the loan. They should calculate this from the date the money was taken to the date they refund.
- HM Revenue & Customs requires Zopa Limited to withhold income tax from the above-mentioned interest. Zopa should give Mr M a certificate showing how much is taken off if Mr M asks for one.
- Pay Mr M £3,598.30 to recognise the impact this situation has had on his mortgage payments.
- Pay Mr M £1,000 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 14 March 2022.

Hayley West
Ombudsman