

The complaint

Mr A complains that Zopa Bank Limited (“Zopa”) is holding him liable for a loan in his name which he says he did not consent to.

What happened

The circumstances of this complaint are well known to both parties, so I will not repeat them all again here in detail. But I will provide an overview of events below.

In short, Mr A says he believed he was dealing with someone involved in trading cryptocurrency; a person which manipulated him to provide various bits of personal information. Mr A explains that this person used this information to take out a £25,000 loan in his name without consent; and then threatened him to transfer the loan funds to their account, which Mr A did.

Mr A contacted Zopa about this matter disputing liability of the loan. As Zopa decided to hold him liable for it, Mr A raised a complaint which he referred to our Service.

One of our investigators considered the complaint and did not uphold it. As Mr A did not accept the investigator’s findings, this matter has been passed to me to make a decision

What I have 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 agree with the conclusions reached by the investigator for reasons I set out below.

But first, I would like to say at the outset that I have summarised this complaint in far less detail than the parties involved. I want to stress that no discourtesy is intended by this. If there is a submission I have not addressed, it is not because I have ignored the point. It is simply because my findings focus on what I consider to be the central issues in this complaint.

The first thing I need to consider in this case is whether I am satisfied, on balance, that Mr A took out the loan in question himself, or provided consent to another to do so on his behalf. Having thought about this, I am satisfied that he did not do either of these things. I say this based on Mr A’s testimony and the evidence he has provided – particularly screenshots of his conversations with the fraudster which took place on a social media platform. It follows that I am satisfied that the fraudster took out the loan in Mr A’s name without his consent.

In relation to the above point, our investigator held the same in his assessment. As it appears both Zopa and Mr A accept this part of the investigator’s findings, I will not develop this point any further in my decision. I will highlight however, that, because it is accepted the loan was taken out without Mr A’s consent – I find that he cannot be held liable under the associated agreement of it; and that his credit file should be amended accordingly.

I will now turn to the principle sum of the loan. That is, the £25,000 Mr A says he transferred to the fraudster under duress.

Mr A argues that due to his financial circumstances and discrepancies on the loan application concerned – Zopa should not have approved the loan. Mr A argues that by doing so, Zopa's lending was unaffordable and that it has breached principles under the Consumer Credit sourcebook ("CONC").

I have thought about whether it is necessary for me to make a determination about the above point carefully. In doing so, I am not persuaded I must. I say this because even if, in my judgment, I find that the loan was unaffordable – this does not negate the fact that Mr A transferred the loan funds to the fraudster. In other words, even if I held Zopa should not have approved the loan because it was unaffordable, it would not be fair for me to say the principle sum of it should be written off on that basis – given the fact that Mr A received the funds and transferred them to a third party. Therefore, I must consider what is the most fair and reasonable approach that should be taken to the principle sum of the loan which Mr A transferred.

Mr A says he knew the £25,000 was from a loan, but transferred this sum to the fraudster under duress. However, Mr A has no evidence to support this – as he says the alleged threats of violence took place over the telephone. Regardless of the absence of supporting evidence, I am not satisfied that the alleged threats were so immediate – that Mr A had no other option but to make the transfers he did, rather than, for example, contact the police at the time.

I say this in particular because Mr A made the transfers over the course of three days and waited a significant amount of time before reporting the matter. I acknowledge Mr A says that he needed to build up the courage to do so as he was scared for his family safety. However, objectively, I am of the view that when he received the loan funds in his account, it is not unreasonable to say he should have reported the matter then – particularly given the alleged threats were somewhat remote.

So, taking all the above together, I find that Zopa cannot hold Mr A liable for the loan under the associated agreement; and that Zopa should amend Mr A's credit file accordingly. However, Zopa is entitled (if it so wishes) to pursue Mr A for the loan debt outside of the loan agreement.

My final decision

For the reasons set out above, my final decision is that I uphold this complaint in part. I therefore direct that Zopa Bank Limited:

- Close the loan agreement opened using Mr A's personal details.
 - As Mr A did not enter into the loan agreement, he can neither be held liable under the terms and conditions of it; nor pursued for the principle sum of the loan under the loan agreement (see above).
- Remove any information about the loan agreement from the information held with Credit Reference Agencies.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 25 November 2022.

Tony Massiah
Ombudsman