

The complaint

Mr W is unhappy Zopa Bank Ltd is pursuing him for a loan applied for in his name as part of a scam.

What happened

The background to this complaint is well known to both parties, so I'll only refer to some key events here.

In May 2022 Mr W was unfortunately caught up in a crypto investment scam. As part of the scam, Mr W provided the broker (the scammer) with personal information to facilitate the opening of a crypto exchange account (which I'll refer to here as 'N'). Mr W says the scammer then used this information to apply for three loans in his name, one of which was with Zopa.

On 20 May 2022 Mr W says the scammer told him £25,000 would be credited into his bank account from their '*profit account*', and that this needed to be transferred back to that account, via Mr W's account with 'N'. On the same day, a loan for £25,000 from Zopa was paid into Mr W's bank account. Mr W then transferred all the funds from the loan to 'N' on 23 May 2022 in three instalments of £5,000, £10,000 and £10,000. Before being processed, all three payments flagged with Mr W's bank as suspicious, and he had several conversations with the bank before the payments were released.

On 23 May 2022 a loan was applied for in Mr W's name from a lender (which I'll refer to here as 'B') for £12,000. The funds were deposited into Mr W's bank account on the same day before he transferred the money, in seven instalments between 24 and 25 May 2022, to his account with 'N'.

On 27 May 2022 the third loan (from a lender I'll refer to here as 'S') was paid into Mr W's bank account. The loan was for £15,000. That money was then all transferred to 'N' on 30 May 2022.

The funds from all three loans are no longer in Mr W's account with 'N' and has unfortunately been lost as part of the scam.

Realising he'd been the victim of a scam, Mr W contacted Zopa on 28 May 2022.

Zopa conducted a fraud investigation. In summary, it said Mr W had willingly provided his personal details to a third party to facilitate the loan application without carrying out sufficient checks. Zopa said the information provided as part of the loan application gave no reason for it to believe the application had not been made by Mr W. And that he met all their credit and affordability requirements, as well as providing selfie and ID information as part of the application security process. Zopa concluded that Mr W was responsible for the loan – together with the applicable interest, fees and charges.

Mr W complained to Zopa. He said he shouldn't be responsible for a loan taken out '*fraudulently*'. He also pointed out that the email used on the loan application was fake and his name had been misspelt.

Zopa didn't uphold the complaint. It explained that as an online company – all its checks are done electronically and those checks had all been met in Mr W's case, including verification of the bank account the loan was to be paid into. It added that Mr W was aware the funds came from Zopa (showing as a payment on his bank statement from Zopa Ltd and as part of the ID checks where the Zopa logo was present) and yet he transferred those funds to a third party without carrying out any checks into who Zopa was. Whilst sympathetic to Mr W's situation, Zopa maintained it had done nothing wrong and so he was responsible for repaying the loan.

Mr W referred his complaint to the Financial Ombudsman. He said he'd never heard of Zopa and if he'd known this was a loan, he wouldn't have transferred the funds. Mr W said he had no contact from Zopa during the application process nor had he agreed to the terms of the loan as he hadn't received the loan agreement. Mr W said he hadn't benefited from the money and was now suffering extreme distress and worry at the thought of having to repay it.

On reviewing the case – Zopa agreed to waive the interest, fees and charges on the loan because Mr W had been the victim of a scam – but as he'd distributed the funds, it still required Mr W to repay the principal sum.

Our Investigator considered Mr W's complaint and partly upheld it. She was satisfied that he didn't apply for the loan (as this was done by the scammer) – and so he shouldn't be liable for the interest, fees and charges – nor should the loan be reported on Mr W's credit file.

But our Investigator found Mr W should've reasonably been aware the funds were from a loan – having discussed this with his bank as part of its security checks prior to the funds being sent to 'N'. And so, she concluded it was fair for Zopa to pursue Mr W for the principal sum.

Mr W disagreed with our Investigator's findings and asked for an Ombudsman's final decision. He said no one, including his bank, spoke to him about the loan. Mr W said he only became aware of the loans from Zopa and 'B' around 28 May 2022 – after he'd transferred all the funds to 'N'. Mr W added that if he'd known the funds from Zopa were a loan – the loans with 'B' and 'S' '*wouldn't have happened*'.

Zopa also didn't agree with our Investigator's opinion that it shouldn't report the loan to Mr W's credit file. It said as it considered him to be responsible for the loan – it would be reporting it.

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'm partly upholding this complaint. But I agree with our Investigator - and for largely the same reasons – that it's fair and reasonable for Zopa to pursue Mr W for the principal sum of £25,000 if it chooses to do so. I realise this will be very disappointing for Mr W and I'd like to assure him I haven't taken this decision lightly.

In doing so, I've very carefully considered all the evidence – including contact notes and phone recordings from Mr W's bank. I'd like to assure Mr W that if I don't mention a

particular point, it's not because I haven't considered it, but I've focussed instead on what I believe to be important to the outcome of this complaint.

I should also add that where the evidence is incomplete, inconclusive, or contradictory (as it is here), I must make my decision on the balance of probabilities – that is, what I consider is more likely than not to have happened in the light of the available evidence and the wider surrounding circumstances.

Mr W has complained to us about the actions of all three lenders (Zopa, 'B' and 'S'). Whilst the information relating to 'B' and 'S' form part of the wider surrounding circumstances to Mr W's complaint, to clarify, I'm only making findings on the actions of Zopa in this final decision.

Mr W has also mentioned the affordability of the loan. Where a lender is found to have irresponsibly lent, this doesn't mean that the borrower automatically has the loan written off. We'd usually say that the lender shouldn't profit from their mistake by adding interest, fees or charges. But we'd normally still say that it's fair for the lender to pursue the principal loan amount. In this case, Zopa has said it will only pursue the principal amount. So, I'm not going to consider the affordability of the loan in detail, as Mr W is already in the position he would be in, were I to find in his favour for that aspect of his complaint.

I don't doubt that Mr W has been the victim of a cruel and sophisticated crypto investment scam. And I'm pleased to see Zopa has now decided not to hold him liable for the interest, fees and charges applicable to the loan. But it is saying it will report the loan to Mr W's credit file.

I agree with our Investigator here that the evidence shows Mr W didn't apply for the loan. Mr W had shared his personal details as part of the scam which explains how the scammer had those. But the email address used at the time of application wasn't Mr W's and his name was misspelt. So, on balance, I don't think he entered into the loan agreement.

Zopa have already agreed not to add any interest or charges to the loan. But I also don't think it is fair for them to report a loan agreement (that Mr W didn't enter into) to the credit reference agencies. Zopa should also remove the record of any searches conducted during the application process.

It isn't in dispute that Zopa paid £25,000 into Mr W's account. And as it isn't seeking to add interest, charges or fees to that amount, and I'm going to direct it not to report it against Mr W's credit file, all that remains to be decided is whether it is fair for Zopa to pursue that amount, should it choose to do so.

Mr W's main point is that he says he didn't know the £25,000 was a loan, and if he'd known, he wouldn't have transferred it to the scammer.

However, I've considered the wider circumstances including events after the Zopa loan arrived in (and was paid away from) Mr W's account. And based on this, I think Mr W ought to have known, and most likely did know, that the funds from Zopa were a loan, prior to paying them away.

I don't dispute Mr W's account that the scammer told him the £25,000 was from their profit account. I can also accept that seeing Zopa Ltd on his bank statement – with no reference to a loan - wouldn't automatically have alerted Mr W to the fact this was a loan. But I can also see that the scammer told Mr W to tell the bank, if asked, he knew the funds came from a loan that he'd taken out. And that the scammer told him the loans would be repaid as part of the investment. I think this really ought to have put Mr W on notice that something wasn't right. He was being instructed to lie to his bank, and I think this ought to have been a red flag to him.

There were also numerous interactions between Mr W and his bank prior to the funds being paid away. The bank clearly treated the matter seriously and even insisted on Mr W attending a branch to answer questions about his outgoing payments. I've listened to calls and read contact notes in relation to these interactions. Whilst the Zopa loan wasn't specifically discussed in the calls I've listened to, the bank notes do refer to it, and I think the level of concern expressed by the bank ought to have been a further cause for concern.

Mr W was also not truthful when his bank was trying to protect him. He said there was no broker involved, that he'd set up the trading account himself, that he'd not provided any personal details and that he'd researched the investment for a couple months. All of which we know to be untrue. So, in these circumstances, I can't fairly say Mr W has acted entirely in good faith.

Further to this, Mr W's main point is that if he'd known the Zopa funds were a loan – he wouldn't have transferred them. But when 'S' called Mr W prior to putting the loan into his account, he told it he had applied for the loan and that it was for home improvements. He then subsequently transferred the funds to 'N'. I appreciate that Mr W says he was pressured by the scammer into agreeing to the loan with 'S'. But I can't ignore that the action he took in relation to this loan completely undermines Mr W's position that he wouldn't have transferred the Zopa funds if he'd known they were from a loan.

Taking all the evidence into consideration, I don't think this is a case where it would be fair and reasonable for me to prevent Zopa from pursuing Mr W for the principal loan amount.

Putting things right

Given the evidence supports Mr W's position that he didn't apply for the loan and didn't agree to its terms and conditions, Zopa shouldn't apply interest, fees or charges, nor should it report the loan to Mr W's credit file. It also shouldn't pursue him for more than the loan amount of £25,000.

My final decision

My final decision is that this complaint is upheld in part. Zopa Bank Ltd should:

- Not pursue Mr W for more than the £25,000 principal loan amount.
- Remove any record of the £25,000 loan from Mr W's credit file.
- If Mr W has already made repayments towards the loan, the proportion of those repayments made up of interest, charges or fees on the loan should be returned to Mr W. And for any such refunds, 8% simple interest (yearly) should be added between the date Mr W made each payment and the date of reimbursement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision **before 18 April 2023**.

Anna Jackson
Ombudsman