

The complaint

Mr M complains that Zopa Bank Limited is holding him liable for a loan he says he didn't apply for.

What happened

I wrote to both parties on 18 August 2023 setting my thoughts on this complaint. I said:

"As you're aware, a £25,000 loan was applied for in Mr M's name with Zopa in August 2021. The loan funds were paid into Mr M's genuine bank account. Mr M then transferred the funds into his friend's account, Mr G. Mr M has explained that Mr G told him the funds came from a loan he'd applied for himself, but which Zopa wouldn't pay into his own account due to restrictions with his account provider. Mr M says he therefore thought he was simply sending the £25,000 to Mr G for a loan he'd applied for in his own name.

Mr M discovered the loan was in his name when Zopa sent him arrears letters. He then spoke with Mr G who told him it was a mistake as he'd applied for the loan in his own name, and only used Mr M's account details for the loan to be paid into. Mr M contacted Zopa to explain he hadn't applied for the loan himself. He also told Zopa that, to avoid his credit file being adversely affected, he was paying off the loan using funds he was obtaining from Mr G.

Mr M complained to Zopa about the loan being in his name as he said he didn't apply for it. Zopa explained the details entered when applying for the loan were done by the person who applied, and their system found no concerns when completing a bank match. And so, they wouldn't investigate this further.

Unhappy Zopa was holding him liable for the loan, Mr M brought his complaint to the Financial Ombudsman. Our Investigator was satisfied Mr M didn't apply for the loan, nor did he benefit from it. And while he may have been overly trusting of his friend by sharing his account details, she didn't think Mr M gave Mr G consent to apply for the loan in his name or had knowledge he was doing so. So, she didn't think it would be reasonable for Mr M to be held liable for the loan capital, interest or charges. She also recommended Zopa remove any reference of the loan from Mr M's credit file. But in respect of the repayments Mr M made towards the loan, as Mr G had been sending him money for this, she didn't think Zopa should refund these.

Zopa didn't agree, they said:

- Although they accept Mr M didn't apply for the loan, they're not convinced about what was discussed prior to the loan being applied for.*
- Looking at the chat history (that Mr M had provided), Mr M gave Mr G his bank account details and then paid the loan funds to him. There isn't however much evidence regarding the application for the loan – and so there's nothing to say Mr M didn't authorise Mr G to act on his behalf before the loan*

application date.

- *They didn't think writing off the loan was reasonable based on the evidence available. But they would agree to write off the interest and remove reference of the loan from Mr M's credit file.*

Mr M added:

- *He didn't accept Zopa's proposal as he felt he'd sufficiently shown he didn't apply for the loan.*
- *He hadn't received any further money from Mr G since March 2023, which was affecting him financially.*
- *He provided an agreement from April 2022, electronically signed by Mr G, in which he accepted liability of the Zopa loan and agreed to repay the amount owed.*
- *He highlighted discrepancies in the loan application such as it included addresses he hadn't resided at; an incorrect salary and the mobile phone number wasn't his.*
- *He provided further correspondence between Mr G and himself in which he's attempting to obtain further funds for the loan repayments. And that also shows Mr G confirming the loan, that he applied for, should be in his name.*
- *He'd reported the matter to the police and Mr G is due to be remanded in August 2023 until appearing in court in November 2023. This is also because of other fraud carried out by Mr G – like this loan application – against other victims. The police have also contacted Zopa about this matter.*
- *He provided an email from the police confirming the Zopa loan was being investigated as a criminal matter.*

After our investigator shared the information that Mr M had provided, Zopa further added:

- *They'd reviewed the information Mr M provided, and it does confirm the story he gave when first reporting the matter to them – as he said Mr G asked for the loan funds to be paid into his account, which he agreed to, and then transferred the funds.*
- *They've held Mr M liable for the loan as he agreed for it to be paid into his account and willingly transferred the funds without completing any due diligence in terms of where the money originated from.*
- *The police had been in touch with them in July 2023 sending them a production order, to which they've responded.*

My current thoughts

A consumer shouldn't be held liable for a credit agreement they didn't consent to. I've therefore considered whether, on balance, I think Mr M consented to this loan agreement. Having done so, I don't think he did. This is because:

- *Mr M has provided chat history, and email correspondence, with Mr G regarding the loan. This doesn't show what was agreed in respect of the loan before it was applied for, as it happened over a telephone conversation. Nevertheless, there is a significant amount of post loan application correspondence that shows Mr G admitting he applied for it and that he did so in his own name. And alleging that the error in Mr M being pursued for the loan repayments is an error on Zopa's part.*
- *This correspondence also shows Mr M asking Mr G to provide proof he'd paid off the loan, as he claimed. Although Mr G says he'll send the proof it wasn't received by Mr M, as the loan hadn't been paid off. I consider this deception supports the likelihood Mr G was dishonest from the outset.*
- *I've found Mr M's testimony both reliable and persuasive here. It's been consistent from the point of him reporting the loan to Zopa, raising the complaint and referring it to the Financial Ombudsman. There's nothing, from what I've seen, to suggest Mr M has been dishonest regarding what happened – including his understanding as to where the loans funds came from and why he paid it to Mr G.*
- *Mr M has provided a signed letter from Mr G in which he admits liability for the loan. Although I can't confirm the authenticity of Mr G's signature, Mr M has provided the email enclosing the letter from Mr G. I therefore have no reason to question its authenticity.*
- *The loan application includes discrepancies – including both the mobile number and email address differing from those Mr M uses and provided to the Financial Ombudsman. Mr M has provided evidence that Mr G is being investigated by the police as a criminal matter. And Zopa has confirmed the police contacted them about it.*

Taking all of this into consideration, I'm satisfied Mr M neither applied or consented to the loan.

I've gone on to consider whether it would be reasonable for Zopa to pursue Mr M for the debt outside of the loan agreement. But I don't think that would be fair here. This is because, from what I've seen, I'm not persuaded Mr M had knowledge Mr G had applied for the loan in his name. Nor am I satisfied that he has benefitted from the funds, as they were subsequently sent to an account in Mr G's name shortly after.

I've considered Zopa's point that Mr M allowed the loan to be paid into his account and willingly transferred it to Mr G without completing any due diligence in terms of where the money originated from. Having thought about this, I don't think Mr M's actions were unreasonable here. I think he was sadly the victim of fraud by a friend, in which he trusted, and so genuinely believed he was assisting him with a banking issue. Mr G also explained to Mr M the funds were originating from a loan and so, I don't think the funds showing as being received from Zopa Bank Limited would've raised concerns. Or given him reason to think it had been applied for in his own name – particularly in the absence of receiving any loan documentation from Zopa. I therefore don't think Mr M could reasonably have prevented what happened and, because of this, it wouldn't be appropriate to attribute responsibility to him.

I'm also satisfied Mr M hasn't received funds from his own bank in lieu of the loan money paid away from his account. As such, Zopa not pursuing him for the debt won't put Mr M in a position of betterment.

For these reasons, I'm currently of the view that it wouldn't be fair for Zopa to hold Mr M liable for the loan. And so, to put things right, I think they should write off the outstanding amount on the loan and remove any reference of it with credit references agencies.

On a final note, I've considered that Mr M has made repayments towards the loan. I've therefore thought about whether these should be returned. Mr M has explained that he received funds from Mr G up until March 2023 to pay towards the loan. Having reviewed Mr's bank statements, it seems the money he received from Mr G was of varying amounts and not entirely consistent with the loan repayments. I don't however think it would be fair for Zopa to refund the loan repayments Mr M paid using money received from Mr G. But given Mr G's final payment to Mr M was on 13 March 2023 and used for the 20 March 2023 repayment, any further repayments towards the loan after this have come from Mr M's personal money. I therefore think these should be refunded, plus 8% simple interest added for the loss of use of money he's suffered.

I've also considered the impact of what's happened on Mr M. And while I accept the loan was applied for fraudulently by Mr G, with Zopa similarly an innocent party here, I think Mr M has suffered trouble and upset that could've been avoided by Zopa. This is because I think Zopa ought to have identified this loan as fraudulent and taken steps to reduce the impact on Mr M upon being notified – such as by writing off the loan as I've suggested. By not doing so, I think Mr M has experienced a significant amount of worry along with financial detriment. Because of this, I think Zopa should also pay Mr M £300 compensation to recognise this.

To put things right and next steps

I therefore think, to put things right, Zopa should:

- Write off the outstanding amount on the loan.*
- Remove any reference of the loan with credit reference agencies.*
- Refund any repayments Mr M has made towards the loan from 21 March 2023 onwards. And pay 8% simple interest, per year, calculated from the date of each payment to date of settlement – less any tax lawfully deductible.*
- Pay £300 compensation.”*

Mr M agreed with my thoughts on the complaint. But Zopa didn't add anything further.

Now that both parties have had an opportunity to respond, I can proceed to making my final decision on Mr M's complaint.

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.

In the absence of any further points for my consideration, I see no reason to depart from the above. I therefore remain of the view that it wouldn't be fair for Zopa to hold Mr M liable for the loan. And so, to put things right, I think they should write off the outstanding amount on the loan and remove any reference of it with credit references agencies. Zopa should also refund any payments Mr M has made from 21 March 2023 onwards – when he stopped

receiving money from Mr G – and pay 8% simple interest to recognise the loss of use money suffered. Further, Zopa should pay £300 compensation to Mr M for the impact this matter has had on him

My final decision

My final decision is that I uphold this complaint. I direct Zopa Bank Limited to:

- Write off the outstanding amount on the loan.
- Remove any reference of the loan with credit reference agencies.
- Refund any repayments Mr M has made towards the loan from 21 March 2023 onwards. And pay 8% simple interest, per year, calculated from the date of each payment to date of settlement – less any tax lawfully deductible.
- Pay Mr M £300 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 9 October 2023.

Daniel O'Dell
Ombudsman