

The complaint

Ms S has complained that Zopa Bank Limited are holding her liable for a debt which she says was the result of ID theft.

What happened

Both sides are most familiar with the case, so I'll summarise things in brief.

In summer 2022, a loan of £20,000 was taken out with Zopa in Ms S's name, alongside a loan with another company.

Ms S spoke to Zopa and the other lender about it later that same day. She explained she'd taken the loan out herself, along with a loan at another company. She confirmed she'd received the funds, and paid the funds on herself, in order to invest in crypto. But the investment scheme had turned out to be a scam, and the scammers had taken the money.

In later correspondence, Ms S changed her testimony, and said the scammers had applied for both loans without her knowledge or consent. She clarified that she still had £7,000 from her Zopa loan in her possession, as she'd realised it was a scam before that was taken.

Zopa held Ms S liable for the loan. They felt the evidence supported that she'd applied for it or was at least aware of it as it was going through.

Ms S came to our service. Our investigator looked into things independently and thought that Zopa could hold Ms S liable for the principal of the loan, but not the interest or fees, and nor should they report it on her credit file.

Neither side agreed, so the complaint's been passed to me to decide.

I sent Ms S and Zopa a provisional decision on 6 July 2023, to explain why I thought the complaint should be upheld in part. In that decision, I said:

First of all, I understand that Ms S fell victim to a scam here, and so she has my sympathy. I appreciate that this cannot have been an easy time for her, and I'm grateful to her for being open with our service about the effect the matter had.

I will also clarify that I have read and carefully considered everything which both sides have said and provided. But we are an informal alternative to the courts, and we don't look at things in quite as formal a way as the courts do. So I won't address the case on a point by point basis. Instead, I will focus on what I have found to be the key points.

Broadly speaking, Zopa can hold Ms S liable for the loan if the evidence supports that she agreed to it. Both sides appear to accept that Ms S fell victim to some kind of scam here. The question is essentially whether the scammers took out the loan without her knowledge – as Ms S now says – or whether Ms S took out the loan herself and then lost the funds due to the scam.

There is quite a bit of evidence substantiating that Ms S took out this loan. For example:

- In her initial calls with both loan companies, Ms S confirmed repeatedly that she took out each loan herself, and forwarded the money on herself.*
- It was only later that Ms S presented the story that the scammers did this without her knowledge. And even then, her testimony was at points inconsistent or contradictory.*
- Ms S received an email from the other lender thanking her for requesting a loan, and stating that in order to process her loan request she needed to confirm her email address by clicking a link. She opened the email and clicked the link to verify her email address for the loan. She did a similar procedure to verify her phone number and proceed with the loan application.*
- Ms S also received emails about each proposed loan's details, setting up her direct debit, and confirmation of the loan taken out in her name. The other lender's records show that she opened their emails at the time of application. But she didn't tell either lender that anything was wrong until hours later, after the loans had gone through and been spent. And even then, as I mentioned above, when she reported things she confirmed she'd applied for both loans herself.*
- Both loans were applied for using Ms S's genuine contact details, including her phone number and email address. It is not likely or plausible that a fraudster would put down Ms S's own contact details if they were trying to apply for a loan without her knowledge or consent. All contact would go to Ms S and the fraud would be discovered and potentially stopped straight away. Generally, I would expect to see a fraudster create fake contact details of their own, which would be straightforward for them to do, especially in an already sophisticated scam such as this one.*
- As noted above, Ms S received and opened quite a bit of correspondence about the loans, but still let the loans go ahead and did not report them until after the fact.*
- Residential IP addresses were used, which matches the IP addresses Ms S used for genuine online banking activity, and is based in her home's location. While I do understand that the scammers asked Ms S to install a remote access app on her phone, there were security checks which found that neither a remote nor proxy connection were used to apply.*
- After the first loan was applied for – and before this one – the scammer sent Ms S a fake text claiming that the first loan was annulled. It's not likely or plausible that they'd do this if they were trying to hide the existence of the first loan or the fact they were applying for this one, as Ms S later said they were. But it does fit both with her original testimony – that Ms S applied for the loans herself, and with known methods of scams – e.g. where a scammer might convince someone to apply for a loan saying they'll later get the loan written off or cancelled.*

Finally, I've not found any evidence which substantially shows that Ms S did not apply for this loan, or which makes me think it's unlikely or implausible that she could have.

So based on what I've seen so far, I find that the evidence and the balance of probabilities supports that this loan was taken out with Ms S's knowledge and consent. I think it's most likely that Ms S was persuaded to take out the loan and pay it on as part of a scam.

That means that, in the first instance, Ms S bears liability for the loan, or at the least its principal sum. Ultimately, it looks like she was aware of it and agreed to it. And Zopa were not responsible for the scam – the scammers were. In these circumstances, I find it would be unfair for me to hold Zopa liable for what happened, or to tell them to fully write off a loan which they lent out in good faith to the genuine applicant based on genuine information.

With that said, I can see that Ms S was the victim of a scam here. She's provided correspondence the scammer sent her which is clearly fraudulent, and the company involved is known for scams – the regulator has even issued a warning about them. The sequence of events fits well with known methods of scams, and Ms S's own bank confirmed that there was some activity on her account where someone was accessing her phone remotely.

I can see that Ms S lost the majority of this loan to the scam – £13,000 – and she has offered to return the remaining £7,000. Her doctor has also provided evidence that she was in a vulnerable state at the time. I think it would be unfair for Ms S to have to pay interest and fees on a loan which she was scammed into taking out while vulnerable, and which she did not benefit from (at least for the most part). It also would not be very appropriate for Zopa to profit from fraud in this situation. So I think the fairest thing is for Zopa to waive the interest and fees in this particular case.

I should also point out that even if I had found that the scammers applied for the loan, rather than Ms S, I would have still held Ms S liable for the principal of the loan in the particular circumstances of this case. The correspondence Ms S received at application made her sufficiently aware that these were loans in her name, and from what Ms S told us, she didn't have a reasonable basis to believe otherwise. According to Ms S's later testimony, she gave the scammers full access to her phone and watched them use it. And I can't see that she did any reasonable due diligence to verify what she was being told. So she didn't take reasonable measures to mitigate her loss, and she ought reasonably to have known that these were loans in her name that would need to be paid back. As such, I would still not fairly be able to tell Zopa to write off the principal – only the interest and fees. And I certainly wouldn't tell Zopa to write off the £7,000 which Ms S is currently benefitting from.

I've thought about whether Zopa should remove this loan from Ms S's credit file. But Ms S's credit file is supposed to be an accurate record of accounts she took out. And as I explained above, I've found that Ms S took out this account. So it should remain on her file.

Ms S's representatives said that Ms S can't afford the contractual repayments. I would expect Zopa to work with her to come to a repayment arrangement that she can afford. I can see that Ms S has also been given the details for independent charities who can give her free advice about dealing with her debts. I hope she finds them helpful.

Lastly, Ms S's representatives pointed out that we've fully upheld other fraud cases. But we look at each case on its individual merits. I've explained above why, in the circumstances of this particular case, Zopa should write off the interest and fees, but they can hold Ms S liable for the principal of the loan. This is a difficult message for me to give, and I know it's a difficult message for Ms S to receive. But given the evidence I have so far, and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

I said I'd consider anything else anyone wanted to give me – so long as I received it by 20 July 2023. I'll talk about both sides' replies below.

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.

Zopa didn't accept the provisional decision. They felt the evidence didn't support that a scam took place. But I've already found that it did. The correspondence which the scammer sent Ms S was clearly fraudulent, the company she dealt with has many reports of scams against them and has had a warning issued about them by the regulator, the circumstances involved fit well with known methods of scams, and Ms S's bank confirmed that there was activity on her account where someone was accessing her phone remotely.

Ms S's representatives also didn't accept the provisional decision. They insisted that Ms S had not taken out the loans. They said she had proactively reported the loans as fraudulent as soon as she became aware of them, and had been consistent in her testimony.

As I explored in the provisional decision, Ms S's testimony was not consistent – she changed it quite drastically. She did not report the loans as fraudulent as soon as she became aware of them, but instead waited until after the fact. And even then, in Ms S's initial reports she confirmed repeatedly that she took out each loan herself. The other key evidence also supports that she took out these loans herself.

The representatives argued that the loan companies didn't do enough due diligence, so they felt there wasn't enough evidence to say that Ms S took out these loans. As I set out in the provisional decision, the evidence includes Ms S validating her email and phone to proceed with her loan application, reading further emails clearly setting out the loans but not reporting them at the time, her own contact details being used to apply amongst other genuine details, residential IP addresses being used to apply which matched Ms S's genuine IP addresses at her home's location and which were not remote or proxy connections, Ms S's contact with the scammer indicating that she knew a loan was being taken in her name, and call recordings where Ms S repeatedly confirmed that she took out the loans herself. I find the evidence strongly supports that Ms S took out these loans. I do not think further due diligence was likely to have shown otherwise.

The representatives made arguments that Ms S's bank should've found the activity on her bank account unusual and made further security checks. But this case is about Zopa, not Ms S's bank. Ms S may be able to raise a separate complaint about her own bank if she feels that her bank didn't do enough.

Lastly, Ms S's representatives pointed out that she was the victim of a scam, and said she hadn't benefitted from the loan. I will point out that Ms S *did* benefit from this loan, as she still has £7,000 of it in her possession. But I already accepted that she's proposed to return this, that she didn't benefit from the majority of the loan, and that she was the victim of a scam. That's why I'm telling Zopa to write off the interest and fees. However, as I've found that Ms S took out this loan, and it would've been clear to her that this was a loan in her name which would need to be repaid, I cannot fairly tell Zopa to write off the principal.

So having reconsidered the case, I've come to the same conclusions as before, for the reasons set out above. I realise that this decision will come as a disappointment to Ms S, though it is not my intention to disappoint her. But given the evidence I have and the balance of probabilities, I'm unable to reasonably reach any other conclusion.

Putting things right

I direct Zopa Bank Limited to remove all interest and fees from this loan, and to work with Ms S to arrange repayments based on what she can afford.

My final decision

I uphold Ms S's complaint in part, and direct Zopa Bank Limited to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 21 August 2023.

Adam Charles
Ombudsman