

The complaint

Ms F has complained that Zopa Bank Limited is holding her liable for a loan which she says was taken out as the result of a scam and was not affordable.

What happened

Ms F responded to an investment advert. She was contacted by a scammer posing as a financial advisor. They persuaded her to invest around £170 with their cryptocurrency trading business. They said she'd made profits, and allowed her to withdraw some. They persuaded Ms F to let them have remote access to her device, and to take out two £10,000 loans to make further investments. When Ms F tried to withdraw her profits, they said she needed to provide a further £15,000 for liquidity, pressuring her and threatening her that she'd otherwise lose her money.

Ms F watched the scammer use her device to apply for this £15,000 loan with Zopa in her name. Ms F also spoke with Zopa directly to confirm the loan application and to provide her statements and ID. The money was paid to Ms F's bank account, then forwarded to the scammer. Ms F later realised she'd been scammed. She's explained that the scammer entered false information in the application and the loan was not actually affordable.

Zopa held Ms F liable for the loan. Our investigator looked into things independently and agreed Ms F was liable for the principal, but proposed that Zopa waive the interest and fees. Zopa asked for an ombudsman to look at things afresh, so the complaint's been passed to me to decide.

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.

First of all, I understand that Ms F 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 candid with our service about the effect the matter had.

I think both sides accept Ms F was aware that this loan was being taken out, that it was in her name, and that it would be owed to Zopa. In her correspondence, Ms F said she agreed to the loan, she watched the scammer apply for it, and she knew it was a loan. She also received emails and calls about the loan application, and when she spoke to Zopa directly at the time of the application, she confirmed she'd applied for the loan and she knew she was personally liable for it. She then sent Zopa her ID and bank statements to get the loan.

Ms F received the loan money into her genuine bank account. And while unfortunately she was tricked into giving this money to the scammer under false pretences, that wasn't Zopa's fault. This all means that Ms F is liable for the loan, or at least for its principal amount, which was paid to her and which she owes to Zopa.

Turning to the interest and fees: I can see that this loan was manually underwritten, and Zopa was given good reason to doubt the validity of the application. For example, Zopa could see that the application had grossly overstated Ms F's income. And it said she didn't have a secured loan, when the bank statements she provided showed she was actually making substantial secured loan repayments and was living out of her overdraft. Indeed, Zopa's own fraud systems triggered a red alert. This should have prompted it to make more thorough checks than the ones it did. I think that in this case, such appropriate checks would have revealed that Ms F had very recently taken out £20,000 of other loans and was most likely already over-indebted.

So I am not reasonably satisfied that Zopa carried out proportionate checks here. And if it had done so, then it seems most likely it would have found that this loan was not affordable. On that basis, we would normally tell Zopa to waive the interest and fees.

Further, even if I accept that Zopa's checks were proportionate or that it was unable to see Ms F's other loans, I still find that it should waive the interest and fees in this case. It doesn't seem fair for Ms F to have to pay interest and fees on a loan which she was coerced into taking out under false pretences, and which she did not actually benefit from. I understand that Ms F was in a vulnerable situation and is in some financial difficulties. And it would not be very appropriate for Zopa to look to profit from fraud in this situation.

So I find that the fairest thing is for Zopa to waive the interest and fees in this particular case. Ms F and Zopa should then work together to find an affordable repayment plan for the loan's principal sum.

Putting things right

Zopa Bank Limited should:

- Rework the loan account to remove any interest and fees, holding Ms F liable for the principal sum only; and-
- Work with Ms F to come to an affordable repayment arrangement for the principal sum.

My final decision

For the reasons I've explained, I uphold Ms F's complaint in part, and direct Zopa Bank Limited to put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms F to accept or reject my decision before 27 November 2023.

Adam Charles
Ombudsman