

## **The complaint**

Mr L complains that Zopa Bank Limited is holding him responsible for the debt on a loan he says he didn't apply for. He also says the loan was unaffordable.

## **What happened**

The background to this complaint is well known to both parties, so I won't repeat everything here.

Mr L accepts he provided a third party (the scammers) with his personal information to, what he believed, open a Clear Score account to assess whether he was entitled to a PPI refund.

Mr L says he was contacted by the scammers who said they'd mistakenly taken out two loans (one with Zopa for £25,000) in his name instead of issuing a PPI refund.

Zopa has said its underwriting department telephoned Mr L who it said confirmed he'd applied for the loan, that it was for home improvements, and that the mortgage on the property was in his partner's name. Zopa also said it confirmed to Mr L that the loan was in his name, and that he was liable for repaying it.

Mr L has said that it wasn't him on this phone call.

Mr L said he was told by the scammers the loans had been paid back, and that he would receive a call from the lenders to ask him why the loans had been cancelled.

The Zopa loan was approved and paid into Mr L's bank account (with Bank H) on 19 October 2023.

On 19 October 2023 Mr L said he received a phone call from someone who said they were calling from Zopa. Mr L said he explained that he no longer required the loan, and that it had been paid back and should be cancelled. Mr L said he then realised the £25,000 loan funds were still in his account.

Between 19 and 23 October 2023 Mr L transferred the loan funds (and the funds from another loan) to the scammers.

Mr L subsequently got in touch with Zopa to let it know he'd been scammed and didn't consent to the loan, and that it was unaffordable. In short, Zopa maintained Mr L had applied for the loan and was therefore liable for it. But Zopa accepted that the loan was unaffordable at the point of sale, and agreed to write off the interest and charges, and not to report the loan to the credit reference agencies.

Zopa is still holding Mr L liable for the £25,000.

Zopa also said that they can create an affordability plan for Mr L which would be reviewed periodically. Due to the impact Mr L said the situation was having on him, Zopa also referred his case to its customer care team for additional support in managing his account.

Mr L referred his complaint to the Financial Ombudsman.

Our Investigator looked into things but didn't uphold Mr L's complaint. In summary, she thought Zopa had done nothing wrong in pursuing Mr L for the loan debt and that the action it had taken was fair.

Mr L didn't agree and so the case has 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.

Having done so, I've decided to not uphold it for materially the same reasons as our Investigator.

I've very carefully considered all the evidence provided. And I'd like to assure Mr L 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.

Mr L has also complained to the Financial Ombudsman about the actions of Bank H and another bank involved in the transfer of the loan funds. For context, I've considered information received as part of those complaints, but my findings in this decision only relate to the actions of Zopa.

#### *Did Mr L consent to the loan and is he liable for the debt?*

At the time of the loan application Mr L says that he was in touch with, and being scammed by, a third-party. However, this doesn't automatically mean Zopa should be required to do more than it has offered to (for example, writing off the loan).

The issue for me to decide is whether Mr L ought reasonably to have known a loan had been applied for and made use of the funds.

Firstly, having considered all the evidence and the wider surrounding circumstances, I think it's likely, on balance, that Mr L applied for the loan, albeit by providing his details to the scammers to facilitate the application.

In cases such as this, I would usually need to decide if Mr L had consented to the terms and conditions of the loan, and if so, whether he was liable for the interest and charges.

But here, Zopa has already agreed to waive all interest and charges – and to not report the loan to credit reference agencies. And so, I don't need to make a finding on this point. My focus, therefore, is on whether it is fair to hold Mr L liable for the principal sum of £25,000.

I take on board what Mr L has said about the way the scammers did things. But even if I accept Mr L's position that it wasn't him on the call with Zopa's underwriting department, Mr L knew (because of his interactions with the scammers and the phone call from who he believed to be Zopa) that the loan had been applied for; and has said that he was aware the loan funds were in his account – before they were paid away. Mr L then moved the loan funds out of his account with Bank H to the scammers – by bank transfers and in cash. Mr L says this was done by way of threats to his property.

Mr L has my sympathy in this regard, but I don't think this was Zopa's fault. Zopa granted the loan to Mr L in good faith, in circumstances where Mr L was fully aware of the loan and the funds were paid into Mr L's account from where he had use of them.

Zopa has agreed to waive the loan fees and interest, and to remove traces of the loan from Mr L's credit file but has maintained that he remains liable for the principal sum of £25,000.

Given what I've said – about Zopa not having done anything wrong and unfortunately Mr L being tricked by the scammers which wasn't Zopa's fault – I'm satisfied the action Zopa has taken in this regard is more than fair.

So, in the circumstances, I think Mr L had reasonable use of the loan funds, and it wasn't Zopa's fault he lost them to a scam. So, on that basis, I can't fairly tell Zopa that it should not be able to pursue Mr L for any of the loan funds.

### Affordability

Zopa has accepted that the loan was unaffordable at the point of sale, and I've seen no reason to question its position here.

Where a business has done something wrong, I'd usually expect that business – in so far as is reasonably practicable – to put the consumer in the position they would be in now if that wrong hadn't taken place. But when it comes to complaints about irresponsible or unaffordable lending, this isn't straightforward.

Mr L received the funds and used them. So, in these circumstances, I can't undo what's already been done. And it's simply not possible to put Mr L back in the position he would be in if Zopa hadn't lent to him.

As this is the case, I must think about some other way of putting things right in a fair and reasonable way bearing in mind the particular circumstances of this case.

My starting point is that Mr L received the money he was lent by Zopa (albeit I appreciate he says he was being scammed) and so it's fair that he should repay the amount he was lent. But where it is the case that a loan was unaffordable, I'll usually tell the lender to refund all the interest, fees and charges added because of the funds that were irresponsibly lent; and ensure that the consumer paid no more than the amount lent. Zopa has already agreed to do this – and to remove all traces of the loan from Mr L's credit file.

I asked Zopa if, given the circumstances of this case, it would be prepared to write off the £25,000 debt – but it hasn't agreed to do so.

I'd usually say that it isn't unfair for Zopa to ask for the £25,000 to be repaid. But there will be some circumstances when I don't think this is fair. For example, if there is *no* realistic prospect of Mr L paying back what he was lent or by doing so; would cause him undue financial hardship.

So, I've thought carefully about whether there's anything in this case that persuades me appropriate redress would include Zopa writing off the £25,000 loan debt. But having given this much thought, I'm not persuaded there is. I'll explain why.

I've asked Mr L for information about his current financial position. He's explained that he became unemployed in December 2023 due to his poor health and that he is in receipt of sickness benefit - as he's been deemed unfit for work.

Mr L has said that his outgoings significantly exceed his income. However, I've seen Mr L's bank statements from Bank H up to May 2024 – and with another bank (Bank C) from January to March 2024. From these statements, I've not seen any evidence that Mr L makes regular payments for accommodation (mortgage) or any household utilities, and that there are some funds available at the end of each month after his essential expenditure is paid.

I've also had sight of statements from a savings account that Mr L held with Bank H until May 2024 at which point it was closed with a zero balance.

I appreciate that Mr L has limited disposal income each month, but I'm satisfied he has *some* available funds to at least pay an amount towards the repayment of the principal loan balance, without causing undue financial hardship.

I'm also mindful that there's a possibility that Mr L's employment and health situations could change in the future – meaning he's in a better position to contribute towards the debt. I've not seen anything to suggest that Mr L's current inability to work is necessarily long-term, although I appreciate that could change.

Mr L has also provided me with a copy of his credit report. This shows that he has taken out several loans and other credit facilities in the past ten years – all of which have been settled. And the only current debt I can see showing on his credit report relates to his Bank H credit card.

And so, from the information I've seen, I think there is a possibility that Mr L's current circumstances might change, meaning there is a reasonable prospect of him being able to repay some, or all, of the debt.

Although, naturally, I'd expect Zopa to agree to a reasonable repayment plan with Mr L, and to be sympathetic to any financial constraints – which it has already said it will do. Zopa has also agreed to periodically review Mr L's account, and to work with him to find a way of settling the debt.

Taking all this into account, I think Zopa's actions in removing the interest and charges from Mr L's loan debt, removing traces of the debt from his credit file, and offering to put an affordable repayment plan in place is a fair and reasonable outcome in the circumstances of this complaint.

I'm sorry to hear of the situation that Mr L has unfortunately found himself in. But for the reasons I've explained, I don't think Zopa needs to do anything more.

### **My final decision**

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision **before 3 March 2025**.

Anna Jackson  
**Ombudsman**