

The complaint

Mr M has complained with the help of a representative, that Zopa Bank Limited (“Zopa”) irresponsibly provided a loan to him which he couldn’t afford to repay. Mr M says Zopa didn’t conduct any affordability checks beyond asking about his employment status, income and mortgage payments.

What happened

Zopa advanced Mr M a loan of £25,000 on 23 June 2023, and the total amount Mr M was due to pay was £32,887.30. An outstanding balance still remains due.

Mr M initially approached Zopa on 5 July 2023 to say that he had been the victim of a scam and he wanted to speak to the fraud department. There was then a further call on 10 July 2023 where Mr M gave Zopa details of what happened to him.

Mr M says he took this loan out because scammers had told him there was an investment opportunity and the scammer walked him through the loan application process before the funds were sent to his bank account, then transferred to an electronic money remittance company before being transferred to a crypto exchange. Mr M says he was told by the scammer that the loan had been taken over and repaid. He has told Zopa he can’t afford the monthly repayments and his parents have been using their savings to service the balance.

Following Mr M’s complaint Zopa initially told Mr M he was being held liable for the loan. However, Mr M provided further information and Zopa was therefore satisfied Mr M had been a victim of a scam and it agreed to rework the account balance so that Mr M only has to repay the capital that was advanced and Zopa would take steps to remove the loan from Mr M’s credit file – but he would remain liable for repaying any outstanding capital. This was outlined in Zopa’s email of 23 September 2023.

Unhappy with this response, Mr M referred the complaint to the Financial Ombudsman saying that while the interest will be waived, it doesn’t go far enough. Mr M wants the loan written off, a refund of the monthly payments which have been made and a payment of compensation for the distress this matter has caused.

An investigator, then reviewed the complaint and he concluded Zopa didn’t need to do anything more than what it had already agreed to do. Zopa had offered to in effect make the loan interest free and to remove it from Mr M’s credit file and this is in line with what the investigator would’ve asked Zopa to do, had he upheld the complaint.

Mr M didn’t agree saying he is a vulnerable person as defined by the industry regulator and Zopa didn’t carry out proportionate checks before it lent to him.

As no agreement could be reached the complaint 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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I've used this approach to help me decide Mr M's complaint. Having carefully considered everything I've decided the offer Zopa has already made to settle the complaint is fair and reasonable and it doesn't have to do any more.

This decision solely deals with the lending decision made by Zopa, it doesn't investigate the scam Mr M has been the victim of or deals with Zopa's fraud investigation.

Mr M is quite right to say that before a loan is granted – or any form of credit, a lender needs to carry out proportionate checks – which in effect meant Zopa had to understand whether Mr M could afford to repay any credit Zopa provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

It seems that Mr M saw on social media an advert for a crypto current investment – and following contact from it a loans were taken out to fund this investment. In relation to the Zopa loan, Mr M says that he was told the scammer would take responsibility for repaying the loan to Zopa.

There is an acceptance here from both parties that Mr M is the victim of a sophisticated scam. I am sorry to hear about the impact this has had not just on him but also his wider family. I've also aware this matter has already been raised with the police.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr M's complaint. In this case, Zopa has already accepted that Mr M has been the victim of a scam. As a result it has offered, in the email of 23 September 2023 to only collect the capital that was advanced to him as well as removing the loan from the credit file.

Zopa's offer, is in line with what the Financial Ombudsman would've asked it to do, had I investigated whether the loan ought to be advanced and then found in Mr M's favour. So, I don't need to investigate to reach a conclusion that the loan was unaffordable, because Zopa's offer puts Mr M into the position he would be in if that finding was made and it was deemed the loan ought to not have been granted.

The starting position when an unaffordable lending complaint is upheld is to try, as far as possible to put the consumer back into the position, they would've been in had the loan not been advanced. But that isn't always possible, because the funds have been received and then spent or moved on.

In this case, the funds left Mr M's possession so it's now not possible for him to return the money to Zopa. While the circumstances of this complaint aren't straightforward, Mr M did take a loan out and did receive the loan funds before sending them on as part of the scam and so the starting position is that the capital needs to be repaid and I think that is the fairest course of action.

As such, while the capital needs to be repaid and Zopa has already accepted that it won't charge interest, fees and charges – in effect it has provided an interest free loan and this is

what I'd expect it to do in those circumstances where a loan is deemed to not have been granted.

I know Mr M wants a refund of the payments that have been made, but given he owes the capital sum I don't think it's fair nor right for Zopa to refund any payments already made.

Zopa has also offered (and may have already done) to remove the loan from Mr M's credit file. Overall, what Zopa has already agreed to do is in line with what I would've recommended it do, if I felt it hadn't carried out proportionate checks and those better checks would've shown it that Mr M couldn't afford the loan.

These events have clearly been distressing for both Mr M and his wider family. But I'm not proposing Zopa pays any compensation in relation to this aspect because the loss and distress have been caused by the scammers not Zopa. Indeed, Zopa wasn't aware at the time that he was vulnerable, and even if it did know this, that doesn't automatically mean it was wrong for the loan to be granted. At the time there isn't anything to suggest that Zopa knew or ought reasonably to have concluded that Mr M was vulnerable.

Of course, things do change, and so Mr M may wish to speak to Zopa to outline his vulnerabilities in more detail to see whether there is any additional help and support it can now offer.

I've also considered whether Zopa ought to write off the full balance, but I don't think that would be fair. While Mr M is the victim here – the loan was still granted, and he has received the funds. It was only when the funds were sent from his bank account to the scammer that Mr M's loss occurred.

I accept he may not have had any benefit from the funds but in the circumstances that wasn't the fault of Zopa rather was the result of the actions of the scammers. As such, I don't think it is unfair or unreasonable to ask Mr M to repay the new outstanding capital balance – which is the £25,000 loan minus any payments that have been received.

I know Mr M will be unhappy with this outcome, I understand that Mr M has approached both his bank and money remittance company to explain what has happened. If he is unhappy with what has happened with regards to their investigation, he may wish direct his concerns to them.

For completeness I've set out below what Zopa needs to do – and what it has already agreed to do in order to put things right for Mr M.

Putting things right

In line with what Zopa has agreed to do as outlined in the final response letter of 23 September 2023.

An outstanding balance will still be due to be repaid and I would remind Zopa of its obligation to treat Mr M fairly and with forbearance when discussing a way forward taking account of his vulnerabilities.

- Zopa should remove all interest, fees and charges from the balance on the loan and treat any repayments made as though they had been repayments of the principal.
- As agreed, Zopa should remove the loan from Mr M's credit file.

My final decision

Zopa Bank Limited has already made an offer to settle the complaint as outlined in the final response letter from 23 September 2023 and I think this offer is fair in all the circumstances.

So, my decision is that Zopa Bank Limited should pay the offer to Mr M.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 August 2024.

Robert Walker
Ombudsman