

## **The complaint**

Mr D complains that Zopa Bank Limited ("Zopa") have held him liable for a loan he didn't apply for after being involved in a scam.

## **What happened**

### *What Mr D says*

Mr D saw an advert from a crypto currency investment company on a social media site. Mr D left his details with them and was later contacted by someone claiming to be a financial advisor from the company. I'll refer to the financial advisor as K. Mr D was asked to download a software package that allowed K to operate his computer – he was told this was to assist him with investing.

Mr D initially invested £200 in the firm and was provided with an online trading account showing the performance of his investment. After about three weeks, the investment appeared to have quadrupled. Mr D says he was called regularly by K who also messaged him repeatedly. He said that K was friendly and after showing Mr D his initial return, told him there was a special offer available to him if he invested £20,000.

Mr D obtained the money from a family member and invested £20,000 through K. He was then told there was an issue with the investment and sent a (fake) email explaining why there was a problem. Mr D was told in order to sort the issue out, a further £20,000 was needed. K tried hard to persuade Mr D to obtain the funds from other friends or family members. Mr D didn't have access to any more funds or people who could loan him the money.

K then told Mr D they had a sister company who could provide finance and if he got a loan, the crypto merchant would immediately repay it. Mr D said he told K he couldn't get a loan because of his current financial situation, based on his reduced income and outgoings. K told him to lie on the application and used the software on his computer to take him through the loan application. A loan was subsequently applied for in Mr D's name with Zopa.

Mr D used money from the loan to send several payments from to another bank account set up in his name. This account had been set up under the direction of K. Mr D then sent those funds to a crypto currency merchant where he'd also been told to set up an account.

I'll note here that Mr D later retracted some of this version and denied making payments, knowing about the loan or discussing the loan with K.

Mr D said that shortly after the loan was paid into his account, he received a message saying that it had been paid off (presumably from K). He was then contacted by K to tell him there was another problem and a further £20,000 was required. Mr D's brother became involved and realised it was a scam. No further payments were made by Mr D.

Mr D reported the scam to the authorities and approached Zopa about what had happened. He told them in some detail what had happened (as above), but this was later amended. Mr

D told Zopa that he wasn't responsible for the loan. He argued that as he was only receiving a portion of his income at the time (due to restricted work availability), Zopa shouldn't have lent him the money in his first place. Mr D also explained to Zopa that he was suffering from ill health and the current situation had caused more stress to him.

Zopa looked into what had happened and later accepted they would have been unlikely to have given the loan if Mr D's real income and expenses were known to them. They said they'd carried out sufficient checks at the time to satisfy themselves the loan was affordable. Zopa removed all the charges and interest from the loan but didn't write the loan off because Mr D was aware of it at the time and used the funds to purchase crypto currency. It was accepted that he was the victim of a scam, but the loan was utilised and should therefore be repaid.

After Mr D's complaint was turned down by Zopa, he brought it to the Financial Ombudsman Service for an independent review of the circumstances. An investigator was assigned to look into the situation and evidence was sought from both parties.

Mr D explained how he'd been scammed into making payments to K as he genuinely believed he was investing in a legitimate crypto merchant. Mr D denied making any loan application and didn't think he should have to repay it. Mr D provided copies of messages he'd had with K and other information about his finances.

Zopa provided details of the application and evidence supplied to them by Mr D at the time of their original investigation. After reviewing the evidence, the investigator accepted that Mr D had been the victim of a scam, but the evidence showed he knew about the loan and moved those funds to other accounts where it was eventually stolen by K. The investigator thought that Zopa's response was reasonable in that they'd removed interest and charges from the loan and confirmed the outstanding debt wouldn't impact Mr D's credit score. But Mr D would be required to repay the substantive loan amount (£20,000). Mr D's complaint wasn't upheld.

Mr D strongly disagreed with the investigator's outcome. He made numerous comments about the accuracy of the investigation and that no account had been taken of his physical and mental health.

Mr D claimed that K had used the software he'd earlier downloaded to move the funds from his account and set up the other accounts in his name with other financial merchants. He further claimed that:

- He was unaware of the finance company recommended by K until after the loan was paid into his account.
- Zopa shouldn't have provided the loan if they'd carried out proper due diligence.
- The calls he held with Zopa were at a time when he was confused, stressed and under pressure through trick questions by their employees.
- Conversations held with the scammer (K) was conducted by a third party without Mr D's knowledge.

Because no agreement could be reached, the complaint has now been passed to me for a decision.

## **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.

## **My final decision**

It's apparent from reviewing the evidence supplied by both parties that Mr D was the victim of a cruel scam. The circumstances he described in one of his conversations with Zopa follows a fairly typical crypto currency scam.

These scams often start with an advert on social media and the promise of huge returns with the victim usually investing a few hundred pounds which is what Mr D did here. There then follows access to a personal "trading platform", designed solely to entice the victim to invest more funds. That's also the case here with the promise of a special offer after Mr D saw his initial investment quadruple in value.

Mr D then borrowed £20,000 from a close family member. After that, the scammer (K) convinced Mr D that there was a problem which required another £20,000 to sort out. At the time Mr D didn't have those funds available, which are clear in the messages provided by Mr D to Zopa – although Mr D later said these were carried out by a third party after his phone was cloned.

Scams such as these often introduce some kind of problem to obtain more funds from the victim, here it was due to a supposed issue with the "blockchain" (part of the crypto network). Reviewing the messages, it's fairly apparent that the conversations were between K and Mr D and not a fictional third party.

Mr D's whole case is that he was scammed after responding to the advert and downloading software to his phone. He told Zopa he had extensive messaging with K – and all these factors follow the typical pattern of such scams. I'd question Mr D's change of story here as it doesn't make sense to me that a scammer who somehow persuaded Mr D to download software would then need to invent a conversation with him. If they had full control of Mr D's accounts (as he's suggested), they wouldn't need to invent a fictional conversation, they'd just use his details and control to take his money.

I think Mr D's original story he gave Zopa is far more accurate than his later retraction and that's what I'm basing my decision on. I understand Mr D was in a very difficult place taking into account the loss of his close family members £20,000 that he was trying to get back. The situation was further complicated by other personal/health issues he was dealing with at the time. It's clear to me he was scammed, but that he also played a part in the application for the loan and its eventual use when paid to other accounts set up through K's instructions.

The messaging conversations clearly point to K persuading Mr D that he needed another £20,000 and Mr D had already ran out of family and friends to help him with more funds. He recounted to Zopa that he told K he couldn't get a loan because of his personal financial situation and was told by K to lie. He also said that he was told what wages to put on the application and helped by K (through the software embedded on his phone) how to complete the application for the loan.

Mr D said he didn't notice the loan agreement sent to his email address but was aware of it when it was paid into his bank account. He confirmed to Zopa that he'd transferred the funds from his account to another account in his own name before purchasing crypto currency that

was then no doubt stolen by K. The messages show that Mr D told K that he'd made various payments from his account after the loan had been paid into it.

In one conversation, K asked Mr D if he'd paid "18" and Mr D says "16, I'd already sent two lots of 2". Looking at his bank account, there are payments leaving the account following the payment of the loan of £2,000, £2,000 and then £16,000. I think this shows that Mr D was himself messaging K and that he was aware the loan had been applied for, knew that some of the details had been falsified and made payments himself to other accounts. Although I recognise these were under the direction of K.

I have thought about the confirmation by Zopa that they wouldn't have provided the loan if they'd seen Mr D's payslips, but here, Mr D entered into an arrangement with K where he knew he'd have to lie to get the loan. It's apparent that he himself didn't think he would be provided the loan as it was unaffordable but was persuaded by K's promises to repay it immediately. Whilst Zopa could have done more here, they were relying, in part, on the information declared on the application form from the applicant.

I don't think it's unreasonable for them to make their assessment with the details from the application form, together with other credit checks which were carried out. As far as I'm aware, no particular red flags appeared, and Mr D later told Zopa he hadn't borrowed other funds.

In conclusion, the evidence shows:

- Mr D was aware of the loan application – which I think he probably completed himself, albeit under K's guidance.
- Once the loan had landed in his account, he made the payments himself to other accounts in his own name.
- The funds were likely removed by K once they were converted to crypto currency.

I think it's reasonable for Zopa to hold him liable for the substantive loan. I agree he shouldn't have to pay interest or charges associated with it and accept that Mr D will require Zopa to treat him appropriately (as I'm sure they would anyway) and demonstrate appropriate forbearance when arranging repayment of the loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 November 2023.

David Perry  
**Ombudsman**