

The complaint

Mr K complains that Zopa Limited are holding him liable for a loan agreement which he says he didn't enter into.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

In February 2016 Zopa agreed a loan in Mr K's name. The application was made online and signed electronically. The £10,000 loan funds were paid into a joint account held by both Mr K and Mrs K (his wife at the time). This was with a bank I'll refer to as 'H'. Of those funds, £9,000 was promptly moved into another account which H says was also in the same joint names.

Repayments were made towards the loan from the initial account with H between March 2016 and August 2018 after which five consecutive payments were missed. Zopa ultimately defaulted the loan and passed the debt to a debt recovery company. Mr K says the debt isn't his. He says his ex-wife took the loan in his name without his knowledge or consent. He says his wife's business failed and they were both in significant financial difficulty at the time. He says he's acted responsibly and has accepted his debts with various other lenders, and Zopa is the only one he's disputing as he genuinely had no knowledge of it until late 2018.

Mr K complained to Zopa who maintained their position of holding him liable for the debt. The complaint was referred to our service and one of our Investigators didn't recommend it should be upheld. Mr K disagrees and has asked for an Ombudsman to make 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.

Having done so I've reached the same outcome as our Investigator and for largely the same reasons. I know this will be disappointing for Mr K, so I'll explain why.

Key to this decision is whether Mr K agreed to the loan agreement that Zopa are holding him to. This would mean either that he entered into it himself, or that his wife took it out in his name with his consent and agreement (effectively acting as his agent).

Mr K has made much of a letter which appears to be signed by his ex-wife. This letter was address to a debt management company and is dated 8 October 2022. I've copied part of it below:

"I can confirm that I had applied for the loan and not Mr [K]. I made regular timely payments on the loan until my business began to fail... At the time of making the application I had

incorrectly used [Mr K's] name in the application, it was an administrative error. This is further supported by the facts that the email, and mobile phone number used in the online application was my own and not [Mr K's]."

Mr K says this evidences the loan was taken without his knowledge and that his ex-wife should be responsible. Zopa say that they've considered this letter but still maintain that Mr K is responsible for the loan. They said they had no way of verifying the letter's authenticity. They also pointed out that the loan application included Mr K's date of birth and details of his employment and salary. I agree with Zopa on this point. The letter suggests that the wrong name was put on the application in error, but it's harder to accept that the wrong date of birth, employment and salary details were also included by mistake. So, I don't think it was unreasonable for Zopa to not place much weight on that letter.

Payments were made towards the loan from the joint account (which Mr K would have had access to) for over two years before it was disputed. The majority of the loan funds were also moved into another account that Mr K was party to, and again he would have had the opportunity to have seen and questioned these funds at the time. I appreciate Mr K says he often worked away and his wife must have hidden statements etc. I accept this is possible and that payments to Zopa on the statement wouldn't automatically evidence that this was a loan in Mr K's name.

But I find a letter that Mr K wrote to Zopa in September 2018 to be persuasive evidence. I've included part of that letter below (my emphasis added).

***"My wife and I** are unable to meet the contractual payments on **my credit line** with your Company... With regards to our personal assets and liabilities, we have a property which is on the market for sale and from the sales proceeds we should be able to pay our personal creditors in full. While the property is on the market for sale waiting to be sold I should be grateful if you would withhold from taking legal action against us. During this period we are prepared to make a token payment of £1 per month. We have taken insolvency advice from a Licenced Insolvency Practitioner and hope that you will allow us to proceed and conclude the sales as noted above."*

Although the letter is signed by Mr and Mrs K, the phrases 'my wife and I' and 'my credit line' indicate that it was written by Mr K himself. And this suggests at this stage he was fully aware that the loan was his – yet there is no mention of it being disputed or in the wrong name. One of our Investigators asked Mr K why he'd written a joint letter promising payment for a loan he hadn't taken out? Mr K said at that time he and his wife hadn't yet decided to separate and he was under a lot of pressure looking after three children and an incapacitated wife. He says its understandable that a mistake could have been made. I've taken this into consideration, but if Mr K didn't know the debt was his prior to September 2018, I'm surprised he didn't include anything in his letter to Zopa about it at that time.

Mr K said that his wife had attempted to include the loan in her IVA, but Zopa declined this as it wasn't in her name. I've not seen evidence of this and Zopa told our service they'd only received contact from Mr K about an IVA in relation to this loan. But even if the contact from Mr K's ex-wife could be evidenced, it wouldn't change my mind as to the outcome of this complaint. This is because Mr K's ex-wife later seeking to include the loan in her own IVA doesn't evidence that Mr K wasn't aware of the loan when it was taken out.

Overall, I don't think Zopa concluding, based on the evidence available to them, that the loan was most likely taken by Mr K is unfair. And it follows that there isn't a reasonable basis upon which I can direct them to do anything further to resolve this complaint.

My final decision

For the reasons outlined above, my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 31 July 2023.

Richard Annandale
Ombudsman