

The complaint

Mr H complains that Zopa Bank Limited ("Zopa") allowed a third party to take out a personal loan in his name without his knowledge or consent.

Mr H is being represented by Mrs S in bringing this complaint.

What happened

In December 2016, Zopa received and approved a loan application for £2,000 in Mr H's name. The funds were paid into his personal current account with a high street bank and repayments were made from the same account via a direct debit until the loan was fully repaid in December 2019.

In 2021, Mr H contacted Zopa and said that he didn't take out this loan. He said that unbeknownst to him, his partner at the time had applied for it and then transferred the funds out of his current account. Mr H also said his ex-partner withheld his current account statements for several years and he didn't know about this loan (and other loans) until 2021, when he requested a few years' worth of statements from his bank.

Zopa said it didn't do anything wrong and refused to refund the repaid amount. Mr H complained and subsequently referred the matter to our service. Our investigator thought that on balance it was plausible that Mr H's ex-partner could have applied for the loan. But they weren't satisfied that Mr H was unaware of the loan funds being paid into his account, or that he didn't benefit from them. So, they concluded that Zopa didn't need to do anything to resolve this complaint.

Mrs S didn't agree with the investigator's conclusions. She questioned how the loan could have been approved without Mr H's consent in the form of a physical signature. The investigator explained that the loan was applied for electronically and approved following online verification. So, no further information or documentation was requested. They also said that it wasn't unusual for acceptance of the agreement's terms to be confirmed via an electronic signature.

Mrs S has asked for an ombudsman's decision on the matter.

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.

I'm sorry to learn that Mr H has gone through a difficult time over the last few years. It's understandable that he and Mrs S feel very strongly about this complaint. So, I'd like to start by reassuring all parties that although I've only summarised the background to the complaint, so not everything that's happened or has been argued is mentioned, I have considered everything that's been submitted in its entirety.

Having done so, I've decided not to uphold this complaint. I'll explain why.

I've thought carefully about what Mr H and his representative have told us about Mr H's circumstances at the time and his relationship with his ex-partner. But I'm also aware that another loan – taken out with Mr H's current account provider – which was initially disputed as being fraudulent around the same time as this loan with Zopa was disputed, has since been discovered to have been genuine. So, there's a possibility that Mr H might be misremembering what happened at the time this loan was taken out.

Mr H says he didn't apply for this loan with Zopa. I can't know for certain what did happen at the time. What is clear though is that the loan funds were paid into Mr H's account, and they were spent from his account in the usual way (pre-existing pattern of spending). Also, the loan was fully repaid in 2019 from that account from his income.

That means there's no outstanding debt that Zopa needs to recover from Mr H. What I therefore need to decide here is whether it's fair to tell Zopa to refund the payments that have already been made.

Application

An online application was submitted in Mr H's name using his employment details, as well as his income and expenditure details. Zopa says it electronically verified the information that was submitted, including carrying out a credit check. The application met its lending criteria, and the funds were paid into an account in Mr H's sole name. In my view, there's nothing about the application that ought to have led Zopa to question whether Mr H was indeed the application.

Mr H's representative has questioned how an application can be approved without the applicant's physical signature. But many financial businesses, including lenders, have moved to paperless applications and it's become common practice for applications to be submitted and verified electronically. This is what happened here. As the information was verified successfully and the funds were requested to be paid into Mr H's account (and not a third party), I don't find Zopa acted unreasonably here by not contacting him to discuss his application further or insisting on a physical signature.

The email address Zopa says it held in relation to the loan does appear to belong to Mr H's ex-partner. The first part of the email address (username) includes his ex-partner's name. But this doesn't automatically mean that Mr H didn't apply for the loan or that he wasn't aware of it or consented to it.

Utilisation of funds

I've looked at the transactions on Mr H's current account during the relevant period to see how the loan funds were spent. Typically, funds obtained from a fraudulent loan are removed by the fraudster immediately. But this isn't what happened here. The funds weren't moved out of Mr H's account immediately. Only a proportion of the loan funds (around £750) were sent to his ex-partner's account, and this was over several transactions for insignificant amounts over the course of the following month. This pattern of several transactions to Mr H's ex-partner spread across the month existed for a long time – way before the loan was paid in. So, it might be that Mr H would have made those payments anyway, using his income rather than the loan funds.

What's more, the majority of the loan funds were utilised through day-to-day spending including cash withdrawals. These transactions haven't been disputed by Mr H. I find it strange that a third party would allow majority of the fraudulently obtained funds to be used

by the customer themselves. This also means that majority of the funds were utilised by Mr H. So, he's had the benefit of the loan funds.

Summary

As I've mentioned, Zopa received payments towards the outstanding balance and the loan has now been repaid in full. We also know that those payments came from Mr H's account.

While I don't fully know the circumstances in which this loan was obtained, the funds were: paid into Mr H's account; spent from his account in the usual way of his day-to-day spending; and repaid from his account from his income. I can't see that the loan was ever in arrears.

Having carefully weighed up everything, I can't fairly conclude that Zopa did anything wrong here. It follows that it wouldn't be fair to ask it to refund the payments three years after the loan was paid off.

I realise that this will come as a significant disappointment to Mr H and his representative, not least because the matter has been ongoing for some time. But for the reasons set out above, I won't be directing Zopa to take any action in relation to this matter.

My final decision

For the reasons given, 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 H to accept or reject my decision before 4 October 2023.

Gagandeep Singh
Ombudsman