

## **The complaint**

Miss T is unhappy that Zopa Bank Limited is holding her responsible for a debt arising from a loan she says she didn't apply for, or benefit from.

## **What happened**

Miss T started investing in cryptocurrency through investment traders that she believed to be genuine. Unfortunately, this was part of a sophisticated scam. Miss T says she was coerced into taking out a loan with a business I'll call 'L' in order to fund the investment, but she says she later became aware that the scammers had also applied for two other loans in her name, one with a business I'll call 'B' and one with Zopa, which is the subject of this decision.

When Miss T received notification for the repayment of the loan taken out with Zopa, she contacted it to enquire about this. Zopa acknowledged that Miss T had fallen victim to a fraud but found she should still be held liable for the debt. It said that Miss T had knowingly allowed the loan to be taken out by the scammers on her behalf.

Miss T was unhappy with Zopa's response, so she came to our service to look into things again. Miss T told our service that she hadn't authorised a third-party to take out the loan on her behalf and claimed she had no involvement in the onward transfer of the loan funds. She therefore felt that being held responsible for the loan was unreasonable.

An Investigator looked into the evidence submitted by both parties and concluded that Miss T shouldn't be held responsible for the debt. They did not consider that Miss T had been aware of the loan application and so did not feel Zopa could reasonably hold her liable for the debt. So the Investigator concluded that Zopa should write off the loan, refund any payments made and remove any reporting of it from Miss T's credit file.

Zopa disagreed with the Investigator's assessment of the complaint. It maintained that Miss T had been aware of the loan application, and noted that the funds had been paid into her current account. Zopa did though offer to remove any interest and charges from the loan amount and so only hold Miss T liable for the capital.

As Zopa disagreed with the Investigator's assessment, the complaint was passed to me for review. I issued my provisional decision on this complaint on 19 September 2023. In that decision I explained why I did not intend to uphold this complaint – because I considered that the evidence suggested Miss T was aware that this loan had been applied for in her name.

Zopa agreed with my findings, Miss T did not. She responded setting out more detail about what had happened, and maintained that she had not been aware that a loan had been applied for in her name at Zopa.

## **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.

In my provisional decision I explained the following:

*“Section 83 of the Consumer Credit Act 1974 outlines that a debtor under a regulated consumer credit agreement shall not be liable to the creditor for any loss arising from the use of the credit facility by another person not acting, or to be treated as acting, as the debtor’s agent.*

*So, in simple terms, Miss T can’t be held liable for a debt that another person, not acting on her behalf, took out. Taking the above into consideration, I must conclude – on the balance of probabilities – whether the loan was applied for by Miss T, or an agent acting on her behalf.*

*I’ve thought very carefully about this, and have looked closely at all the evidence we’ve received about what happened here. This includes evidence from the related cases Miss T has referred to our service about the other loans that were taken out and about the bank accounts that the funds were moved through by the scammers.*

*I also want to make it clear that I don’t doubt that Miss T has been the victim of a sophisticated and unpleasant scam. There is no question in my mind that she was misled and manipulated by the scammers. But even with that in mind, with the evidence I’ve seen, I consider that it is more likely than not that Miss T was aware of this loan when it was applied for, and on that basis I don’t think I can fairly say that she should not be held liable for the outstanding balance.*

*I say this because of the following evidence:*

- *Messages between Miss T and the scammer from 22 July 2022 – only a few days after this Zopa loan was taken out – where she refers to multiple loans and her belief that the scammers would be paying them back, and from 26 July 2022 where Miss T again refers to the scammers repaying the three loans. These messages do not suggest that Miss T was surprised by the existence of any of the loans, just that she was expecting the scammers to pay them back.*
- *Notes from Zopa’s systems showing that in online chats with Zopa on 27 July and 1 August 2022 Miss T told Zopa that this loan should have been repaid by a third party – not that she was unaware of its existence*
- *A recording of Miss T’s conversation with Zopa on 4 August 2022 where she says that the scammers told her to take out all three loans, but that the scam company would take liability for the loans and would repay them on her behalf. In this conversation Miss T says that she watched the scammer apply for the Zopa loan on her behalf using remote access software.*
- *The answers Miss T gave to Zopa when it asked her a series of questions about the scam – here she says that she did not become aware of the scam until 28 or 29 July 2022, but it’s clear from the evidence detailed above that she knew about the Zopa loan before these dates.*

*Miss T has said that she may have been confused when speaking to Zopa, and that she was only aware of the third loan – the one taken out with ‘L’ – but I’m afraid that I don’t think the evidence supports what she has said. I’m satisfied that the evidence I’ve seen from around the time the Zopa loan was taken out suggests that it is more likely than not Miss T was aware of the loan. I don’t doubt that she was manipulated into taking it out, but that is not the same as not being aware of the loan at all.*

*With this in mind I consider that this loan was most likely taken out by a third party acting as Miss T's agent, so it follows that she can be held liable for the debt under the Consumer Credit Act 1974. I do appreciate that she has not had the benefit of these funds as they were ultimately sent to a scammer, but I don't think I can fairly say that Miss T should not be held liable for repaying the loan when I'm satisfied that she was aware it was being taken out in her name. With this in mind, I also think it is fair for the status of the loan to be reflected on Miss T's credit file.*

*Zopa has offered to write off the interest and charges on the loan, and it is for Miss T to now decide if she wishes to accept that offer.*

*I know this will be very disappointing for Miss T, but for the reasons I've explained, I do not currently intend to tell Zopa to do anything more than it has already offered."*

Zopa has confirmed it agrees with my findings and has no further comment to make. Miss T has provided a detailed response to my provisional decision, and I appreciate her taking the time to do so.

I want to reiterate that there is no doubt here that Miss T was the victim of a nasty scam, but that doesn't mean that she isn't responsible for lending that was taken out to fund that scam if she was aware that lending was being taken out for her benefit.

Miss T has said that her comments about the loan to Zopa have been taken out of context, she's said that when referring to 'multiple loans' she was referring to the fact that the website that was used to apply for the loan with 'L' referred to multiple loan companies. She also has said that the scammers only told her about the loan with Zopa on 21 July 2022, after it had already been taken out.

But I've listened closely to the conversations Miss T had with Zopa, and have seen the logs of the online chats that took place between Miss T and Zopa, and the messages between Miss T and the scammer, and those all suggest to me that she was aware of the loan when it was taken out. Miss T does not say in those early chat logs that the loan was taken out without her knowledge, and in her call with Zopa on 4 August 2022 she clearly states that she watched the loan being taken out in her name. Miss T has previously said that she must have been confused when she said this, but she sounds sure of what she was saying during this call.

I also have to question why, if Miss T was not aware of the loan with Zopa being taken out, she didn't raise any concerns about this with Zopa immediately when she says she found out about it on 21 July 2022. Miss T says she did not realise that she might be the victim of a scam until the scammers didn't pay the loan back as promised, but I would think that if a loan had been taken out in her name, without her permission, then that would be of significant concern to her, I can't understand why she would not have realised something might be wrong at that time.

With all this in mind, I remain satisfied that it is more likely that Miss T was aware of the Zopa loan being taken out for her benefit. So it follows that I remain satisfied it is reasonable for Zopa to hold her liable for that loan.

Zopa has offered to remove any interest and charges from the loan, as a gesture of goodwill, in an effort to assist Miss T, and if she wants to accept that offer she should let Zopa know. But she will remain liable for the capital of the loan, and I also consider it reasonable that the loan remain on her credit file, so that it is a true reflection of how much she owes to creditors.

I know this won't be what Miss T was hoping to hear, and I'm sorry we couldn't help her further.

**My final decision**

I do not uphold this complaint, it is for Miss T to contact Zopa Bank Limited directly if she wishes to accept the offer it has made.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or reject my decision before 25 October 2023.

Sophie Mitchell  
**Ombudsman**