

The complaint

Miss C complains that Zopa Bank Limited held her responsible for a loan agreement she says she didn't enter into.

What happened

Miss C fell victim to an investment scam. She says fraudsters took out a loan on her behalf, which was paid into her account. They said that the loan was a mistake and she needed to repay the funds. So she sent the loan funds to the fraudster.

Zopa said that the loan was taken out using her correct personal details, which she'd provided to the fraudsters, so it could hold her responsible for repayments.

Miss C referred the complaint to our service, but one of our Investigators didn't uphold it. They noted that Miss C had received emails relating to the loan and concluded that she must have been aware of it. It was therefore fair for Zopa to hold her responsible for it.

Miss C disagreed with our Investigator's view. In summary, she said:

- She hadn't seen any documents to show that she authorised or signed for the loan.
- The fact she'd given over I.D. to the fraudster did not amount to giving consent for the loan to be taken out.
- I.D. alone shouldn't have been sufficient for the loan to be applied for. She questioned what other information had been used by the fraudsters.
- She hasn't even seen the loan agreement or the terms of the loan.
- She questioned which I.P. address was used to take out the loan and who signed for it.

As no agreement could be reached, the case was passed to me for a final decision.

In advance of my final decision I wrote to Zopa. I informed it that, based on the evidence I'd seen, I didn't think that Miss C had actually applied for the loan (for reasons I'll go on to explain) but that she ought to have known that a loan had been taken out in her name. I suggested that it was fair for Zopa to hold Miss C liable for the principal sum, but not any charges or interest. It transpired that Miss C had already reached a settlement with Zopa. She paid less than the principal sum to settle the loan in full.

I also suggested that, as I didn't think Miss C agreed to the loan, there shouldn't be any adverse information about it recorded on her credit file. Zopa agreed to this suggestion and have said that it is taking steps to remove this information.

Our Investigator wrote to Miss C to explain what had happened and to ask whether the steps taken by Zopa have resolved her complaint, but they didn't receive a response. So, I'll now give my final 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.

As a starting point, Miss C can't be, fairly and reasonably, held liable under a loan agreement unless she entered that agreement herself or gave permission for someone else to enter that agreement on her behalf. Miss C denies doing either.

If Miss C didn't enter the agreement herself or give anyone else permission to do so, Zopa can still fairly hold Miss C responsible for the principal sum, if she knew or ought reasonably to have known that the money she received was a loan in her name and she passed it to the fraudsters regardless. If Miss C passed on the money without understanding that it was a loan in her name then it wouldn't be fair for her to have any liability.

I understand that Miss C had been told that the loan funds had been paid by mistake. I can see that the messages between her and the fraudster suggest the loan is 'processing' from their end. That can't be true – they'd have no sight of Zopa's payment system. So, this statement does support what Miss C has said – that the fraudsters likely applied for the loan and suggested that it had come from, or been brought about as a result of, them. So I accept that, on balance, Miss C didn't apply for this loan and was misled about its true nature. That means that Zopa can't hold her liable for anything other than the principal sum.

But, there's no dispute that Miss C's email address was provided as part of the application and that she received an email which confirmed that a loan had been applied for in her name. That email is clear – I don't think Miss C ought reasonably to have taken any other meaning from it than what was intended. There's no reason to think that Miss C wouldn't have also received the email confirming the success of the loan application, providing further confirmation that there was a loan in her name. As the emails are very clear, I think the onus was on Miss C to check with Zopa before paying money away.

Overall, while Miss C may not have applied for the loan or given anyone else permission to do so, she ought reasonably to have known that the funds she received were funds from a loan in her name. That means that Zopa can hold her liable for the principal sum, but no charges or interest. But, in any case, she's already paid off the loan at a discount, which puts her in a better position than I'd recommend. And, following my recent correspondence with Zopa, it has also agreed to remove any adverse information about the loan from her credit file.

While I recognise that Miss C has lost out here as a result of a cruel scam, I think that the actions Zopa have already agreed to take put Miss C in the position she should, fairly and reasonably, be in. So, I'm not asking it to do anything further. Miss C should be aware that it may take several months for her credit file to be updated.

My final decision

I uphold this complaint in part and instruct Zopa Bank Limited to request the removal of the loan from Miss C's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 13 September 2023.

Rich Drury
Ombudsman