

The complaint

Mr K complains that ZOPA Bank Limited (“Zopa”) failed to refund a transaction he didn’t recognise.

What happened

What Mr K says

Mr K noticed a cash withdrawal had been made using his Zopa credit card that he hadn’t made himself. He reported this to Zopa a few days later after asking his partner if she’d used the card.

In his first call with Zopa, Mr K told them that:

- He worked from home and had cctv at his house.
- He was at home at the time of the cash withdrawal.
- He didn’t use the card to withdraw such large amounts (£220.00).
- He hadn’t given anyone else authority to use his card.
- He couldn’t remember the personal identification number (PIN) of the card and usually had to use the app to get a reminder of it.
- He hadn’t written the PIN down anywhere.
- The card was kept in his wallet which was usually on his desk at home.
- Other persons had access to his home and his card.
- He hadn’t given the PIN to anyone else.
- He’s given authority to a close family member to use one of his other (not Zopa) cards some six months earlier.

Zopa told Mr K that there was no compromise of his PIN, and they wouldn’t be refunding him. He was advised to report the matter to the police and to raise a complaint with Zopa, which he did. Zopa cancelled the card and issued a new one.

A follow up call to discuss the complaint was held with Mr K and he told them:

- He confirmed he hadn’t lost his card and had made undisputed transactions after the cash withdrawal.
- His memory was “...like a sieve”, so it was possible that he’d previously let his close family member or his partner use his card.
- He was confident it wasn’t his close family member.
- He confirmed he hadn’t given permission for anyone else to use his card (to withdraw cash).

Zopa investigated the complaint but didn’t change their position, holding Mr K responsible for the transaction. In their final response to the complaint, Zopa said that Mr K had failed to

protect his account by allowing others to use his card, contrary to the agreement he'd signed.

Mr K was unhappy with Zopa's response and brought his complaint to the Financial Ombudsman Service for an independent review. An investigator was assigned to look into the circumstances and both parties were asked for information about the complaint.

Mr K confirmed that:

- He was at home at the time, supported by cctv evidence.
- He'd not given anyone permission to use his card.
- He sometimes worked at night, and it wasn't unusual to be asleep during the day.
- Others had access to his phone and wallet.

Zopa provided details of their investigation and information about the disputed transaction, in summary this said:

- Mr K had held a credit card for about a year.
- The disputed transaction took place on 1 July 2023.
- Mr K first reported it on 5 July 2023.
- There was no compromise of his PIN.
- Zopa couldn't prove a fraud had happened.
- Undisputed transactions took place both before and after the cash withdrawal.

After reviewing the evidence, the investigator made recommendations to uphold the complaint. The following comments were made:

- Mr K was at home at the time.
- Although he hadn't documented his PIN, his partner and a close family member were aware of it.
- Mr K would have been aware of any (permissible) use of his card.
- He still had the card.
- The genuine card and PIN were used to make the withdrawal.
- There's no evidence to support the withdrawal was authorised by Mr K or that he gave anyone else permission to use his card.
- Zopa should have refunded the transaction much sooner.
- A refund of the disputed transaction should be made, to include removal of any interest or charges associated with the disputed transaction, update the Credit Reference Agencies (CRAs) and pay £50 to Mr K for the inconvenience caused by Zopa's handling of his complaint.

Zopa disagreed with the investigator's outcome and asked for a further review of the complaint, commenting that Mr K was at fault for sharing his PIN with other family members. As no agreement could be reached, the complaint has now been passed to me for a decision. As part of my own investigation, I asked both parties for additional information:

In answer to my queries, Mr K said:

- He believed he was clear about who he'd asked about his card and was adamant that he hadn't given anyone permission (on that day) to use his card to withdraw cash.
- He believed his friend (who was staying with him at the time) knew the PIN to his

- card. This was from previous uses to make certain purchases requested by Mr K.
- He limited the use of his card to general purchases and only withdrew small amounts of cash (£20) if necessary.
 - He noticed the cash withdrawal a few hours after making it and confirmed the card was back in his wallet. It wasn't reported straight away until Mr K confirmed the withdrawal wasn't made by those present in his home at the time.
 - He'd only just paid off the balance.

Zopa provided some further details about the transaction, namely that:

- There was no balance enquiry carried out prior to the disputed transaction.
- A large incoming payment (£273.48) was made earlier the same day as the disputed transaction.
- The account was in credit prior to the disputed transaction.

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.

The relevant law surrounding authorisations are the Payment Service Regulations 2017 (PSR) and the Consumer Credit Act 1974 (CCA). The basic position is that Zopa can hold Mr K liable for the disputed payments if the evidence suggests that it's more likely than not that he made them or authorised them.

Zopa can only refuse to refund unauthorised payments if it can prove Mr K authorised the transactions, but Zopa cannot say that the use of the card and PIN conclusively proves that the payment was authorised.

Unless Zopa can show that consent has been given, it has no authority to make the payment or to debit Mr K's account and any such transaction must be regarded as unauthorised. To start with, I've seen the bank's technical evidence for the disputed transaction. It shows that the transaction was authenticated using the payment tools issued to Mr K. I'll now need to consider the information provided by both parties to determine whether there's sufficient evidence to hold Mr K responsible for the disputed transaction or not.

Because credit was involved here, the CCA specifies that a consumer wouldn't be liable for such a transaction unless they consented to someone else having possession of that card. Additionally, Zopa's case that Mr K was grossly negligent (by not protecting his PIN and card) isn't relevant to transactions using credit.

Zopa's terms say that if Mr K allows others to use his card (with his permission) he would be held accountable. This is often referred to as "apparent authority", so where Mr K allows other users to take his card and use it, he would generally be held responsible for any transactions carried out by them (whether he specifically knew about the transactions made or not), but this has limits. For example, if Mr K allowed access to his card and hadn't given any indication that it was in anyway restricted, then the use of his card would likely be his responsibility – even if he later disagreed with the transaction

But, if (as Mr K asserts) he had previously given others his card to use for specific purposes (for example to make a single purchase for a named item) and it was clear that the use of the card was limited to that particular occasion, it would be difficult to argue that he then

authorised other uses of that card (outside of that permitted use). So, the issue for me is whether it's both fair and reasonable for Mr K to be held liable for the withdrawal based on the domestic arrangements he had with his housemates.

When Mr K was first asked about the arrangements with his card and PIN, he told Zopa he hadn't given anyone else access to the card and no one else knew his PIN. Mr K later confirmed he'd allowed others to use his card and they knew the PIN, arguing that the use (at the time) was for a specific purpose and not general access to his card. Mr K couldn't specify when others had used his card, but it seems likely this was some time ago (or he would have been more likely to remember).

The evidence indicates that Mr K suspected others (from his household) had taken his card because he delayed notifying Zopa about it for several days until he'd asked his partner (and his housemate?) who denied using it. It's not surprising that whoever took the card later denied it – particularly if this wasn't part of how Mr K allowed the previous use of his card.

There were a few other factors which I've considered here:

- The card was easily accessible to Mr K's housemates.
- There was no balance enquiry prior to the withdrawal, indicating whoever took those funds knew what was available.
- The balance had been cleared earlier that day.
- The account was in credit prior to the cash withdrawal.
- The amount withdrawn was untypical of the account's normal usage.

The evidence indicates that whoever used the card did so armed with a lot of knowledge about the current state of the account, easy access to the card and knew the PIN.

I think it's fair to say that Mr K was very trusting of his housemates, and it's plausible one of them knew that the account had recently been cleared, so could time the use of the card to withdraw a larger amount of cash.

So, taking all the evidence into account, I currently think it's likely that Mr K had previously provided permission for his card and PIN to be used by others in his house, but that use was restricted to a specific purchase (probably some time ago). It follows that I don't think there's evidence to show that Mr K's housemates had unfettered access to use the card as they wished. That means I don't think there was "apparent authority" present at the time of the cash withdrawal and on balance, I think it was more likely than not that someone without Mr K's permission took his card and used it to make the withdrawal and it wouldn't be fair or reasonable to hold Mr K liable for the payment.

Putting things right

Because I'm satisfied it was unauthorised, Zopa are required to remove the disputed transaction from Mr K's account (refund it if it's already been repaid) and refund any associated fees or interest that resulted from it.

I've also thought about the redress recommended by the investigator based on the inconvenience caused to Mr K. I understand Mr K has argued that due to delays caused by his complaint and Zopa's lack of an immediate refund, there should be additional redress.

Any refund that Zopa may have made immediately after Mr K reported it would likely have been reversed after the conclusion of their own investigation. That's because they believed Mr K was responsible based on what they knew at the time. So, the impact of not providing

this refund straight away was likely to be minimal (because it probably would have been taken back), so I think the original recommendation of £50 redress was appropriate and I won't be asking Zopa to increase this.

Generally, I didn't think there were noticeable delays in dealing with this complaint, although I accept it has taken some time to deal with it overall, but Zopa aren't solely responsible for that. I won't be making any further recommendations concerning additional payments to Mr K.

Zopa should also ensure that their reporting to the CRAs accurately reflects the account activity and that no adverse reporting is made as a result of this transaction.

My final decision

My final decision is that I uphold this complaint against Zopa Bank Limited and they should now settle the complaint as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 17 May 2024.

David Perry
Ombudsman