DRN-3098895

Complaint

Miss J has complained that Zopa Limited ("Zopa") unfairly arranged unaffordable loans for her. She says proper affordability checks to establish whether she could afford to repay what she was being lent weren't carried out.

Background

Zopa operated the electronic system in relation to lending which led to Miss J being provided with a first loan in March 2016. The loan was for £1,000.00 and due to be repaid in 36 monthly instalments of £39.70. Miss J settled this loan early in January 2017. Zopa then arranged a second loan for £1,500.00 in July 2017. This loan was due to be repaid in 36 monthly instalments of £48.05. This loan was settled within a month.

Zopa then arranged a third loan for £5,500.00 in May 2017. This loan was to be repaid in 60 instalments of £132.26. Finally, Zopa then arranged a fourth loan for £5,500.00 in February 2018 and some of the proceeds from this settled the third loan. This loan was due to be repaid in 60 monthly instalments of £129.23.

Miss J's complaint was reviewed by one of our investigators. She thought that Zopa ought to have seen that Miss J wasn't in a position to repay any of these loans at the time it arranged them. So she partially upheld Miss J's complaint.

Zopa disagreed with our investigator's view. As Zopa disagreed, the complaint was passed to an ombudsman for a final decision.

My findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Miss J's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Miss J's complaint. These three questions are:

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- Did Zopa complete reasonable and proportionate checks to satisfy itself that Miss J would be able to meet her obligations under the P2P agreements in a sustainable way?
    - If so, did it make a fair decision?
    - If not, would those checks have shown that Miss J would've been able to do so?

- Did Zopa act unfairly or unreasonably in some other way?

If I determine that Zopa didn't act fairly and reasonably in its dealings with Miss J and that she has lost out as a result, I will go on to consider what is fair compensation.

Did Zopa complete reasonable and proportionate checks to satisfy itself that Miss J would be able to meet her obligations under the P2P agreements in a sustainable way?

The rules, regulations and good industry practice in place when Zopa brought about these P2P agreements with Miss J required it to carry out a proportionate assessment of whether she could afford to make her repayments. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Zopa had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Miss J*. In practice this meant that Zopa had to ensure that making the payments to the loan wouldn't cause Miss J undue difficulty or adverse consequences. In other words, it wasn't enough for Zopa to simply think about the likelihood of Miss J making payments, it had to consider the impact of loan repayments on Miss J.

Checks also had to be "proportionate" to the specific circumstances of the application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);

- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were Zopa's checks reasonable and proportionate?

Zopa has said that it completed an income and expenditure assessment with Miss J before arranging all of these loans. It also carried out credit checks to work out what Miss J's existing credit commitments were too. As the monthly payments were relatively low (in comparison to Miss J's monthly income) I accept that it could be argued that a relatively light touch check might have been proportionate in the circumstances. However, I'm mindful that the credit checks carried out showed Miss J had a significant amount of existing debt.

Equally, it's unclear to me how Zopa concluded that Miss J had a monthly disposable income of close to £750 when it also appears to have concluded that her monthly repayments to existing creditors was almost as much as her monthly income. It's also worth noting that by the time of loan 2 there appeared to have been no reduction in what Miss J owed externally since loan 1 despite it being over a year later. And Miss J was now returning for more than the amount advanced for loan 1. So I think Zopa's checks ought to have gone further. And it follows that I think Zopa ought to have found out even more about Miss J's circumstances when she returned for even more funds for loans 3 and 4, only a few months later.

It seems to me that Zopa merely carried out the same checks for all four of Miss J's loans. And think that this led to Zopa failing to take into account the whole picture of its overall lending history with Miss J, in favour of a narrower focus on the individual applications, which presented a more favourable picture of a deteriorating position. Given Zopa's own information showed that Miss J's existing debt wasn't decreasing, I would have expected it to have taken further steps to verify Miss J's income and expenditure to ensure she had the necessary funds to repay the loan it was arranging.

As Zopa proceeded with approving further loans, for increasing amounts, without taking steps to verify Miss J's income and expenditure, I'm satisfied that the checks Zopa carried out before arranging these loans weren't reasonable and proportionate.

Would reasonable and proportionate checks have indicated to Zopa that Miss J would have been unable to repay these loans?

As reasonable and proportionate checks weren't carried out before these loans were provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that proportionate checks would have told Zopa that Miss J would've been unable to sustainably repay these loans.

Miss J has now provided us with evidence of her financial circumstances at the time she applied for these loans. Of course, I accept different checks might show different things. And just because something shows up in the information Miss J has provided, it doesn't mean it would've shown up in any checks Zopa might've carried out.

But in the absence of anything else from Zopa showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on what Miss J's bank statements say as an indication of what her financial circumstances were more likely than not to have been at the time. To be clear, I've not looked at Miss J's bank statements because I think that Zopa ought to have obtained them before arranging these loans for her. I've consulted Miss J's bank statements because they were readily available at this stage and they contain the information I now need to reconstruct the proportionate check Zopa should have but failed to carry out.

It's important to note that Zopa was required to establish whether Miss J could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. Of course, the loan payments being affordable on a strict pounds and pence basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

I've carefully considered the information available in light of all of this.

Having done so, it's clear Miss J was gambling significant amounts of money and that her ability to make payments to these loans would in large part depend on her success as a gambler. In these circumstances, it is apparent to me that Miss J was unlikely to have been able to repay these loans without borrowing further or experiencing financial difficulty.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Miss J was unlikely to have been able to make the repayments to these loans without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Zopa to the fact that Miss J would not be able to sustainably make the repayments to these loans.

Did Zopa act unfairly or unreasonably towards Miss J in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Zopa acted unfairly or unreasonably towards Miss J in some other way.

So I find that Zopa didn't act unfairly or unreasonably towards Miss J in some other way.

Did Miss J lose out as a result of Zopa unfairly and unreasonably bringing about her loans?

I think that these loans had the effect of unfairly increasing Miss J's indebtedness as it led to her to being given additional credit she couldn't afford to repay. The monthly payments, which also included interest and charges, took up a portion of Miss J's income at a time where she was already struggling.

So I find that Miss J did suffer significant adverse consequences and as a result lost out because Zopa unfairly arranged these loans.

Fair compensation – what Zopa needs to do to put things right for Miss J

Having considered everything, I think it is fair and reasonable for Zopa to put things right for Miss J in the following way:

- refund all the interest, fees and charges Miss J paid on loans 1 and 3 (it's my understanding that all the interest paid on loan 2 has already been refunded;

- removing all interest, fees and charges applied to loan 4 from the outset. The payments made should be deducted from the new starting balance – the £5,500.00 originally lent. Zopa should treat any payments made should the new starting balance be cleared as overpayments. And any overpayments should be refunded to Miss J. If an outstanding balance remains on loan 4 after these adjustments, Zopa can use the compensation due for loans 1 and 3 to reduce and clear this balance.

- add interest at 8% per year simple on any interest, fees, charges and overpayments from the date they were paid by Miss J to the date of settlement†;

- remove any adverse information recorded on Miss J's credit file as a result of loan 1, 2 and 3. Any adverse information recorded about loan 4 should also be removed in the event Miss J no longer has an outstanding balance with Zopa, once all adjustments have been made.

† HM Revenue & Customs requires Zopa to take off tax from this interest. Zopa must give Miss J a certificate showing how much tax it has taken off if she asks for one.

If after all of the above adjustments have been made (including offsetting the compensation for loans 1 and 3) an outstanding balance remains on loan 4, Zopa should set up an affordable payment plan for Miss J. I'd also remind Zopa of its obligation to exercise forbearance and due consideration if it intends to collect on an outstanding balance, should one remain after all adjustments have been made to the account, and it's the case Miss J is experiencing financial difficulty.

My final decision

For the reasons I've explained, I'm upholding Miss J's complaint. Zopa Limited should put things right for Miss J in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 7 December 2021.

Jeshen Narayanan
Ombudsman