

## **The complaint**

Ms W complains about the role played by Zopa Limited ("Zopa") in facilitating a finance agreement between her and a third party.

## **What happened**

In November 2019 Ms W tells us she entered into a finance agreement with the assistance of Zopa. Under this agreement Ms W borrowed the sum of £3,000 to be paid back over a period of 48 months. The monthly repayments were £108.61.

Zopa is not a lender in this complaint. Rather it operated an electronic system in relation to lending which Ms W used to find a lender. In other words, Zopa provided a platform to facilitate lending between Ms W and the lender who ultimately lent to her. This lender consists of several third parties who collectively I will call "L". L is not a party to this complaint. The type of finance agreement Ms W had with L is known as a peer-to-peer agreement ("P2P agreement").

In addition to the agreement of November 2019, Ms W indicates that she also entered into at least one other finance agreement with the assistance of Zopa, but she has not provided any further details about this.

Initially Ms W suggested that at the time L lent to her she already had three credit card accounts with third parties. In addition, she said she had a personal loan with a third party and a credit account with another third party - she did not specify what type of credit account this was.

Ms W's position is that the lending was irresponsible because it was unaffordable. She suggests she needed to take out further credit afterwards in order to make the repayments. Ms W holds Zopa responsible for all of this and she complained to it. She asked for a refund of all interest and charges she had paid in relation to the agreement together with statutory interest on that refund.

In response Zopa told Ms W that in processing her application it considered several factors (including but not limited to) her credit profile and credit history, and it also looked specifically at affordability. Zopa further explained it takes account of information supplied by trusted third parties as well as the applicant. It suggested that nothing in the checks it carried out showed anything that should have caused concern. For all of these reasons, Zopa did not agree that its actions in helping Ms W obtain finance from L were inappropriate.

Dissatisfied, Ms W came to our service.

Once Ms W's complaint was with us Zopa provided further information. It said its checks had established that Ms W had given correct information about her income and the affordability of the finance agreement. It suggested the information it checked showed she had an acceptable payment history in relation to her pre-existing debt. It pointed out her payment history did not suggest she had found the lending unaffordable. It suggested that she had told it she wanted to borrow to consolidate debt.

One of our investigators looked into Ms W's complaint. He did not recommend that it should be upheld.

Zopa appeared to accept our investigator's recommendation, Ms W did not. In summary, Ms W told us prior to taking out the finance with L she had significant pre-existing borrowing in the form of loans with other lenders. In addition, she also had four credit card accounts and an overdraft. Ms W suggested that her unsecured debt was high relative to her income. She added if she had used all the credit that was available to her that would have made a significant difference to her monthly repayments.

Ms W asked that an ombudsman take a fresh look at her complaint.

### **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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

When Zopa operated an electronic system in relation to lending by L to Ms W under a P2P agreement, it was a regulated firm this meant it had to follow the relevant regulations at the time for this activity.

In brief, under those regulations Zopa had to make sure it carried out an assessment of the creditworthiness of the prospective borrower, that is Ms W. The assessment had to be based on sufficient information. In particular, it had to consider the potential for the commitments under the P2P agreement to adversely impact the prospective borrower's financial situation, taking into account the information of which the business was aware at the time the P2P agreement was to be made. It also had to take account of the prospective borrower's ability to make repayments in a sustainable manner for the entire duration of the agreement.

Further, amongst other things, it had to put in place clear and effective policies and procedures to make a reasonable creditworthiness assessment. Zopa was obliged to take account of relevant information when making this assessment.

Moreover, it needed to take steps to ensure that information was complete and correct. The extent and scope of the assessment had to be dependent upon and proportionate to factors which might have included:

- The type of credit
- The amount of credit
- The cost of credit
- The financial position of the prospective borrower at the time of seeking the credit.

When looking at whether Zopa met its obligations to Ms W I think it is fair and reasonable to bear these regulations in mind and look at how Zopa applied them to Ms W's situation.

Ms W has talked about taking out several finance agreements with help from Zopa. But as far as I can see Zopa only operated an electronic system in relation to lending from L in one instance. I have seen nothing to suggest that she entered into several finance agreements

via this route. Therefore, I have only focused on the one finance agreement that I have details for.

Ms W was seeking a relatively small amount but for a relatively long term. Moreover, from the information I have available to me she did have existing unsecured credit in the form of two loans, and several credit cards accounts.

In the two to three months prior to taking out the finance with L, it appears she took out personal loans with a total value of around £27,000. A substantial sum in the context. I note that it appears Ms W said the purpose of the finance with L was debt consolidation. But that really does not fit with her personal loan activity.

The credit cards accounts all appeared to be in good order, and none were close to their limits. I do take Ms W's point though the combined available balance of those credit card accounts, at around £6,000, was significant in the circumstances.

In the three months immediately before entering into the finance agreement Ms W had used her overdraft. But it appears she was using it as it was meant to be used. The overdraft was not hardcore. Rather, she was going into the overdraft and then coming out of it on a monthly basis.

It does not appear that Zopa checked Ms W's actual income and expenditure. Rather it appears to have relied on what Ms W said and checks with third parties. I appreciate that Zopa tells us it tested what Ms W told it about her sole income through independent means. That said given that it seems that Zopa did not check Ms W's actual outgoings, it is hard to see how it could have known with any degree of certainty that Ms W's outgoings especially her non-discretionary expenditure was at such a level that she still had enough income to make the repayments. I think in these very particular and individual circumstances, it would have been proportionate to look at Ms W's actual income and outgoings as part of the creditworthiness assessment.

I also think it would have been proportionate given the size and timing of the credit that Ms W had taken out in the especially in the two to three months before her agreement with L, and all the other issues I have mentioned above to ask further questions about Ms W's financial situation.

For all of these reasons I don't think that Zopa did meet its regulatory obligations to Ms W in relation to carrying out the creditworthiness assessment.

That being said, it would not fair or reasonable to say Zopa had to take the action Ms W asks for just on the basis of what I have found above. Rather, I have to also be satisfied that if Zopa had taken all the steps it should have done it would have found that Ms W could not afford to take out the P2P agreement with L or that it would be irresponsible to introduce her to a lender for some other reason. To this end I have taken a look at the information I have got about Ms W's wider financial situation at the time that she made her application to Zopa.

I have looked at Ms W's monthly expenses including all her essential expenditure and day to day living expenditure. I have taken that away from Ms W's monthly income which appears to include both her salary and a regular financial contribution from her husband.

When Ms W complained to Zopa she said that her average income was £1,800 but the information I have seen including her bank statements indicate that her average monthly income at the time she applied for the finance was around £400 per month more than this. In the circumstances, Ms W's disposable income appeared to be more than sufficient to cover her monthly repayments of £108.61. On this basis, I have no proper grounds to say that the repayments were unaffordable. It follows that I don't agree that Zopa needs to take any further action. In particular, it is not fair or reasonable to ask Zopa to refund Ms W the interest and charges she has paid and to add interest to this sum.

**My final decision**

My final decision is that I do not uphold Ms W's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms W to accept or reject my decision before 2 June 2022.

Joyce Gordon  
**Ombudsman**