The complaint

Mr H says Zopa Limited lent to him irresponsibly.

What happened

Zopa operated the lending platform which gave Mr H a 36-month loan for £2,500 in June 2019. The monthly repayments were £106.59 and the total repayable was £3,837.24.

Mr H says the loan was unaffordable for him, it drove more debt and financial hardship for him.

Our investigator said the complaint should be upheld. She said Zopa's checks were not proportionate and better checks would have shown Mr H was unlikely to be able to sustainably repay the loan.

Zopa disagreed. It asked for confirmation of Mr H's housing costs saying he declared them to be £0. On receipt of these, it argued he still had enough disposable income to afford the loan.

As an agreement wasn't reached the complaint was passed to me to make a 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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and I've followed it here.

The rules and regulations when Zopa lent to Mr H required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So Zopa had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mr H. In other words, it wasn't enough for Zopa to simply think about the likelihood of it getting its money back, it had to consider the impact of the repayments on Mr H.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up 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 and cost of credit they have applied for. 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 repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

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 kept all of this in mind when thinking about whether Zopa did what it needed to before agreeing to lend to Mr H. So to reach my conclusion I have considered the following questions:

- did Zopa complete reasonable and proportionate checks when assessing Mr H's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?
- if not, what would reasonable and proportionate checks have shown?
- did Zopa make a fair lending decision?
- did Zopa act unfairly or unreasonably in some other way?

I can see Zopa asked for some information from Mr H before it approved the loans. It asked for details of his income and employment. It also checked his credit file to understand his credit history and existing credit commitments. It asked about the purpose of the loan, which was wedding costs. From these checks combined Zopa concluded Mr H had enough monthly disposable income to afford to repay the loan.

I don't think these checks were proportionate in the circumstances of this case. Mr H was agreeing to repay a loan over a three-year period, so I think Zopa needed a fuller understanding of his financial circumstances before concluding the loan was sustainably affordable. Zopa accepted that Mr H had no housing costs without further investigation, and it knew from its credit check that Mr H had significant unsecured debt of £25,373. So after its initial checks I think it ought to have carried out a fuller financial review, based on verified actuals, before deciding to lend.

I have looked at Mr H's bank statements from the months prior to his application. I am not saying Zopa had to do this but it's one way it could have got a better understanding of Mr H's finances.

They confirm – as Zopa was already aware from its credit check – that Mr H was spending in the region of £960 a month, a significant percentage of his income, on his existing credit commitments. They also show that Mr H's finances were already under pressure and he was struggling to manage his money. And this loan was not for debt consolidation, but for wedding costs. He was consistently overdrawn on both his current accounts, incurring daily overdraft fees, and did not have the disposable income Zopa assumes (between £421 and £521) in its most recent correspondence. Had it completed better checks, I don't see that it could fairly argue that further increasing Mr H's debt level and monthly expenditure on credit was not creating a risk that he would need to borrow to repay, or suffer other adverse financial consequences. And to meet its obligations it needed to check this – not just the pounds and pence affordability of the loan: CONC 5.2A.12(R) sets out:

The firm must consider the customer's ability to make repayments under the agreement:

(1) as they fall due over the life of the agreement and, where the agreement is an open-end agreement, within a reasonable period;

(2) out of, or using, one or more of the following:
(a) the customer's income;
(b) income from savings or assets jointly held by the customer with another person, income received by the customer jointly with another person or income received by another person in so far as it is reasonable to expect such income to be available to the customer to make repayments under the agreement; and/or
(c) savings or other assets where the customer has indicated clearly an intention to repay (wholly or partly) using them;
(3) without the customer having to borrow to meet the repayments;
(4) without failing to make any other payment the customer has a contractual or statutory obligation to make; and
(5) without the repayments having a significant adverse impact on the customer's financial situation.

Mr H went on to have problems repaying the loan in the first few months of its term.

It follows I think Zopa was wrong to give the loan to Mr H.

I haven't found Zopa acted unfairly or unreasonably in any other way.

Putting things right

I think it's fair and reasonable for Mr H to repay the capital that he borrowed, because he had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him.

If there is outstanding debt that Zopa has sold it should buy it back if it is able to do so and then take the following steps. If Zopa is not able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

It should:

- Remove all interest, fees and charges from the loan and treat all the payments Mr H made as payments towards the capital.
- If reworking Mr H's loan accounts results in him having effectively made payments above the original capital borrowed, then Zopa should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking the accounts leaves an amount of capital still to be paid, then Zopa should work to agree an affordable repayment plan with Mr H.
- Remove any adverse information recorded on Mr H's credit file in relation to the loan.

*HM Revenue & Customs requires Zopa to deduct tax from this interest. Zopa should give Mr H a certificate showing how much tax it's deducted, if he asks for one.

My final decision

I am upholding Mr H's complaint. Zopa Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 January 2022.

Rebecca Connelley
Ombudsman