

The complaint

Mrs H complains that Zopa Bank Limited irresponsibly granted her a loan she couldn't afford to repay.

What happened

The background to what led Mrs H to apply for a loan with Zopa Bank Limited ('Zopa') is well-known to both parties so I won't be outlining that in my decision.

Mrs H successfully applied for a loan of £25,000 with Zopa in December 2019. The terms of the agreement were that Mrs H would repay £639.14 over 60 months.

Mrs H complained to Zopa in 2020 saying that they shouldn't have approved the loan as the repayments weren't affordable and so they had lent to her irresponsibly. Zopa didn't agree. They said that they carried out a thorough assessment which included asking Mrs H for bank statements to show her income and a credit check which they say raised no concerns. Zopa said that they were satisfied that Mrs H had enough disposable income to cover the monthly payments.

Our investigator recommended the complaint be upheld. She thought Zopa didn't carry out proportionate checks to determine whether the agreement was affordable. In particular, she felt that Zopa should have done further checks to establish whether the income shown on the bank statements was Mrs H's income. And that had they carried out further checks, they would have seen that the income was actually her husband's and so would have realised the agreement wasn't affordable to Mrs H.

Zopa didn't agree and said that Mrs H had confirmed her income to them as being that which was shown on the bank statements she provided and that they based their lending decision on that information.

I issued my provisional decision on this complaint on 27 October 2021, in which I said the following:

Mrs H says that Zopa provided her with a loan that wasn't affordable. So, what I am essentially considering in this decision is whether Zopa completed reasonable and proportionate checks to satisfy itself that Mrs H could repay the borrowing in a sustainable way.

If I consider that Zopa carried out reasonable and proportionate checks, then I need to consider whether they made a fair lending decision. If I don't consider that Zopa carried out these checks, then I need to consider whether reasonable and proportionate checks would have shown that Mrs H could sustainably repay the borrowing.

I've considered – amongst other things – the rules and guidance for lenders set out in the Consumer Credit Sourcebook ("CONC") within the Financial Conduct Authority's handbook. These were the rules and guidelines set in place when Zopa granted Mrs H the loan.

Before granting credit, Zopa were required to carry out a reasonable and proportionate assessment of Mrs H's ability to sustainably repay the debt. This is often referred to as an 'affordability check'. This check had to be borrower-focussed. This means it needed to be concerned with whether Mrs H could sustainably afford the borrowing (considering her specific circumstances), rather than how statistically likely she was to repay. The latter is the risk posed to Zopa as the lender, or its 'credit or lending risk' but this is not necessarily the same as an assessment of affordability.

What's considered reasonable and proportionate will vary depending on a number of factors such as, but not limited to:

- The type and amount of credit;*
- The total repayable and the size of the regular repayments;*
- The duration of the agreement;*
- The cost of the credit; and*
- The consumer's individual circumstances.*

What this means is that there isn't a one-size-fits-all approach to what is considered proportionate, as any of these factors (or others) might influence what a reasonable and proportionate check ought to be.

I've looked at the checks Zopa carried out. They asked Mrs H to provide them with three months' worth of recent bank statements which they say was used to determine her income. Zopa also carried out a credit check. I'm unsure whether Zopa used the bank statements to determine Mrs H's monthly expenditure as part of their checks as I haven't seen from the evidence provided that they did this. I mention this because I think that an assessment of both Mrs H's income and expenditure was proportionate in these circumstances. Mrs H was being asked to repay a significant amount of money each month compared to the income that was shown on the bank statements. I'll return to this a bit further on as I'll firstly look at the information that I know Zopa considered, namely Mrs H's income and the information shown on the credit check.

I've looked at the information obtained from the credit check. This didn't show anything concerning, for example, any signs of over-indebtedness or adverse information like late payments or defaults. The check did show that Mrs H had a current mortgage with payments of around £1,200 each month but no signs of any problems in repaying this.

Zopa also looked at three months' worth of bank statements and determined that Mrs H's income on average was around £2,170. I've looked at these statements and can see that Zopa calculated this by averaging out the three income amounts that came in from a company I'll call 'O', over the period of time covered by the bank statements, although the actual amount that came in each month was around £2,700.

This is a crucial part of this complaint as I note our investigator felt that Zopa should have carried out further checks to determine that this was indeed Mrs H's income, particularly bearing in mind that this was a joint account she held with her husband. I don't though agree with this. I think Zopa did do an appropriate check on this. I can see that they specifically asked Mrs H to confirm what entries on the bank statements related to income and that Mrs H said that these were the entries from 'O'.

I think it reasonable for Zopa to have relied on that clarification from Mrs H and that they went ahead with the application on the basis that this was Mrs H's declared income, which was corroborated by the information shown on the bank statements.

However, there is a further element to this which I've mentioned previously. That is the expenditure information that was shown on the bank statements. I think that Zopa should have considered this as part of their checks. As I've said, this was a significant monthly commitment for Mrs H and would have taken up nearly a third of the income that Zopa took into account. Not only that, Zopa had this information to hand at the time and so ought to have taken that into account anyway to ensure that Mrs H had enough disposable income to sustainably make each monthly payment.

I've looked at the expenditure shown on these bank statements and can see that on average there were non-discretionary expenses of around £2,000 each month, including the mortgage and other expenses such as insurances, council tax, phone contracts and utilities. The repayments for this loan were £653.14 so that would have in theory left Mrs H with almost no money left over for other essential costs like food and clothing to give two examples.

However, I've also seen that there were significant amounts leaving the account each month for what was described as 'CB card top up'. I've added up a total of around £8,000 over the three months. I understand that Mrs H says that these were for essential monthly costs. I'm unsure what these costs specifically were but I can also see that Mrs H's husband seems to have covered a large amount of those costs from his sole account. This meant that overall the account remained in a fairly healthy positive balance. I don't think this would or indeed should have caused Zopa to have had concerns about whether Mrs H was able to make the loan repayments. The reality of that may well of course have been different and I don't know what Mrs H would have likely said had Zopa asked questions about this. But Zopa would I think have been entitled to think that these other costs would be largely covered by her husband but also that the expenditure costs shown on the statements could in theory be covered to some extent by Mrs H's husband.

Overall, I can't be satisfied that Zopa carried out proportionate checks as I don't know whether they took Mrs H's expenditure into account (which I think was proportionate to do). However, even if they failed to do so, I don't think that this would have reasonably led them to think that the loan was unaffordable. So, for the reasons I've mentioned, I don't currently plan to uphold this complaint.

I asked the parties for their comments on my provisional decision.

Mrs H didn't agree. In summary, she said that I had come to the same decision as she had in that Zopa hadn't carried out the correct checks, but she didn't understand why I hadn't then upheld her complaint. Mrs H also said that it was clear from the bank statements used by Zopa that she couldn't afford the repayments. And Mrs H asked whether I had asked Zopa to confirm that they had carried out the checks I felt were proportionate (which I had outlined in my provisional decision) and whether that made a difference to the complaint.

Zopa didn't reply.

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.

I thank Mrs H for her response to my provisional decision. However, it hasn't changed my view on the complaint. I'll explain why here.

Mrs H correctly says that I found that Zopa hadn't carried out the right checks when it assessed her loan application. However, that doesn't then automatically lead to me upholding the complaint. I set out in my provisional decision that, if I felt that Zopa hadn't carried out proportionate checks, I would then need to think about what a proportionate check likely would have been, and whether then that should have led Zopa not to grant Mrs H the loan.

I felt, and still do, that Zopa should have taken Mrs H's monthly expenditure into account bearing in mind the repayments on the proposed loan were significant compared to her income. However, as I also noted in my provisional decision, the bank statements I've seen and which were provided to Zopa by Mrs H before the loan was granted, shows there were significant amounts leaving Mrs H's account each month and that the account was still left with a fairly healthy positive balance even after those amounts had been debited. So, I don't think this should have led Zopa to think that Mrs H wasn't able to afford the loan.

My provisional decision was intended to let both parties give any final submissions and evidence before I send my final decision (which marks the end of our involvement with Mrs H's complaint). That would include any reasons either party has for agreeing or disagreeing with my provisional findings. To answer Mrs H's comment, I haven't asked Zopa to confirm whether they did the correct checks on Mrs H's loan. I set out why I felt they hadn't done so. As Zopa hasn't replied to my provisional decision, then I see no reason to change my view on that. However, for the reasons I've given here and in my provisional decision, I find that Zopa didn't act unfairly in approving the loan.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 13 January 2022.

Daniel Picken
Ombudsman