

The complaint

Mr M complains about Zopa Limited's ("Zopa") role in facilitating a finance agreement between him and a third party.

What happened

I set out what happened leading up to and in the course of Mr M's complaint in my provisional decision, which I issued earlier this year. To make this decision easier to read though I will go through this background again here.

In January 2017 Mr M entered into a finance agreement. Under this agreement Mr M borrowed the sum of £10,000 to be paid back over a period of 48 months. The monthly repayments were £306.93.

Zopa is not a lender in this complaint. Rather it operated an electronic system in relation to lending which Mr M used to find a lender. In other words, it provided a platform to facilitate lending between Mr M and the lender who ultimately lent to him. This lender is a third party who I will call "P". P is not a party to this complaint.

Mr M has said this about his complaint *"between February 2016 to February 2017 I was in the grip of a crippling gambling addiction. I was able to borrow within that period over £50,000 [from various lenders]. I believe I should never have been able to borrow the money I did, and it was irresponsible lending on behalf of those companies. One of which was Zopa [it] must have been able to do appropriate checks and see what was happening."*

Mr M has brought separate complaints about the other companies who he holds responsible for his situation. However, I am not looking at those other separate individual complaints in this decision.

Further, as a consequence of what Mr M's sees as the irresponsible actions of Zopa, in facilitating his finance agreement with P, Mr M says he experienced a number of adverse events. He indicates he was already having money trouble before January 2017 but after this due in part, to this new lending he experienced financial difficulties. These financial difficulties, in his opinion, then led to him entering into an Individual Voluntary Arrangement ("IVA") with some of his creditors. The finance agreement with P was covered by the IVA.

Moreover, Mr M mentions almost losing his home and the ending of his marriage which he also attributes, in part, to the money he was able to borrow and then gambled away.

Mr M seeks compensation for what he views as the impact of the borrowing, which Zopa facilitated, on his life which he describes as being *"catastrophic"*.

Mr M complained to Zopa about all of this.

In response Zopa said that Mr M had made his application online. Zopa added that it assumes that those who apply to use its service are providing correct information. Zopa talked about the criteria which it used to assess Mr M's application, it described this criteria as being *"very strict"*. It explained, that amongst other things, its assessment criteria takes account of information from credit reference agencies, historic debt, and debt to income ratios.

Zopa pointed out that when it checked Mr M's financial standing it found he had missed no payments and neither had he paid late in the previous 12 months in relation to any of his pre-existing debts. Moreover, he had told it, that the purpose of the finance agreement was to consolidate his pre-existing debts, which it suggested seemed plausible in the circumstances.. Further, he was in long-term employment and when it looked at what his disposable income was based on the information it had, it seemed Mr M could sustain the monthly repayments. However, it did not look at the statements for any of Mr M's bank accounts. But then again it does not agree that it needed to. Moreover, it did not agree that there was anything in the details of Mr M's financial history, which it had access to, which suggested he was engaging in problem gambling.

For all of these reasons Zopa does not agree that its actions in helping Mr M obtain the finance agreement were inappropriate. Rather, it suggests it did appropriate checks before it introduced Mr M to P. Moreover, it does not agree that in the circumstances it ought reasonably to have been aware of Mr M's gambling.

Dissatisfied, Mr M came to our service.

I looked into Mr M's complaint. I issued my provisional decision. Here is what I said about what I'd 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.

Why I don't think Zopa met its obligations when it came to the checks it carried out

When Zopa operated an electronic system in relation to lending by P to Mr M under a peer-to-peer agreement ("P2P agreement"), it was a regulated firm. This meant it had to follow the relevant regulations at the time for this activity. The regulations in January 2017 were different to the current regulations, it is those regulations that were current in January 2017 that I am referring to here.

In brief, under those regulations Zopa had to make sure it carried out an assessment of the creditworthiness of the prospective borrower, that is Mr M. 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, Zopa had to carry out other regulatory obligations to the same extent as if it was the lender. In particular, 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. In addition, it needed to give the prospective borrower the opportunity to see any information that was included in an application for the agreement if the prospective borrower did not fill in this information themselves. 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.*

Also, Zopa was also obliged to take account of obligations that were relevant to lenders (even though it was not a lender) and use that as guidance. The guidance indicated amongst other things, the factors it might consider when deciding if its assessment was proportionate.

Mr M was seeking thousands of pounds of unsecured credit (£10,000 as I have already mentioned) over a relatively long term (48 months, as I said before) under a type of an agreement that placed significant responsibilities on him, and which would leave him facing significant potential consequences if he failed to meet his obligations to make repayments.

Moreover, Zopa was aware that Mr M was also servicing various pre-existing debts prior to his application. The total amount of that pre-existing debt is not clear but in the twelve months prior to taking out the finance agreement with P, the information we have seen shows Mr M took on around £33,000 of unsecured new debt. In these circumstances I think it would have been proportionate to look at Mr M's actual income and outgoings as part of the creditworthiness assessment and the assessment of Mr M's ability to repay any new borrowing in a sustainable manner. I also think it would have been proportionate given the size and timing of the credit that Mr M had taken out in the last twelve months to ask further questions about this borrowing.

I appreciate that Zopa tells us it tested what Mr M told it through independent means, but it has not told us what it did to check this in detail. Rather it has indicated that the check it did showed that it was likely that Mr M had given it correct information about his income. But it has not explained how that check worked or how it established that it was likely Mr M had given accurate information. Zopa did not check Mr M's outgoings, it would appear, so it is hard to see how it could have known, with any degree of certainty, that Mr M's outgoings were at such a level that he still had enough income to make the repayments.

Moreover, the level of long-term new debt that Mr M took out in the twelve months immediately before Mr M came to Zopa for yet more finance might reasonably have caused it to ask more about Mr M's financial situation. I accept that Zopa might have seen that Mr M had paid off a substantial amount of credit card debt. This credit card debt appears though to have been older debt. And Mr M was taking on more and more new debt, (but not the £50,000) figure Mr M tells us about but still tens of thousands of pounds in new debt. The upshot of this was his overall borrowing, on the face of it, appears to have to have been increasing rapidly which does not fit with the profile of a person who is trying to consolidate and ultimately paydown debt.

It may be the case that Mr M had not missed payments or made late payments to his pre-existing debt in the 12 months prior to taking out the finance agreement with P. That does not necessarily mean Mr M was maintaining these repayments in a sustainable manner. Indeed, Mr M suggests he was very much in a robbing Peter to pay Paul situation. The timing and the amount of Mr M's new debt suggests this was so. In any event, at the very least I find a reasonable operator of an electronic system in relation to lending under a P2P agreement would have asked more about this aspect of Mr M's financial life.

For all of these reasons I don't think that Zopa went far enough [with its assessment] and it follows that I don't think it met its obligations to Mr M in this instance.

Affordability

That being said, it would not fair or reasonable to say Zopa had to take the corrective action Mr M 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 Mr M could not afford borrow under the P2P agreement with P or that it would have realised it was irresponsible to introduce him to a lender for some other reason. To this end I have taken a look at the information I have got about Mr M's wider financial situation at the time that he made his application to Zopa.

As far as I am aware, Mr M had a current account, a sole current account and a joint current account, no savings accounts, and a joint mortgage account. I only have information about Mr M's sole current account. The difficulty for Mr M here is that in order to make a finding about his financial situation at the relevant time and whether the finance was affordable, I would need information about his joint account[s] too. I don't have that information. Moreover, normally, if lending is unaffordable I'd expect to see that the consumer missed his initial payments. I have seen nothing to suggest this is the case here. It follows I can make no finding therefore that the lending that Zopa facilitated was not affordable.

Irresponsible lending

However, Mr M suggests that his complaint is primarily about irresponsible lending due to his problem gambling, rather than about affordability. Even a cursory examination of the information I have about Mr M's sole current account shows that he was gambling.

Moreover, I think given the degree and impact of the gambling that gambling fits the broad definition of problem gambling i.e. gambling that was disruptive or damaging to Mr M. I'm satisfied that if Zopa had done all the checks it should have done it would have seen this and I am also satisfied that neither Zopa nor any responsible firm carrying out the regulated activity that Zopa was carrying out would have progressed Mr M's application in these circumstances.

Redress

When I look at redress I can't look at the situation in isolation rather I have to look at the wider overall picture. In this particular instance that means I have to look at the redress that Mr M has already had in order to decide what redress, if any, Zopa ought fairly be asked to pay.

Generally, this service would say that if a consumer had the use of the capital he should have to pay it back. This is the approach I think is fair and reasonable in this particular instance. Even if, as here, the consumer, Mr M says that he gambled all the money away.

However, under the terms of the IVA it appears that Mr M was treated as having settled the debt even though from the information I have seen, Mr M short settled the debt. That is P accepted much less than it was owed. Zopa has told us Mr M paid approximately £1,535 towards his debt. It is not clear if this figure was the amount of capital he repaid, or the amount Mr M paid overall. Either way, on the face of it he has already had a substantial discount towards the capital he had to pay off. When I take into account the overall situation I don't agree it is fair or reasonable to say that in addition to this Zopa ought to refund any interest and charges that Mr M paid in relation to the P2P agreement, plus interest on that refund.

If there was any negative information on Mr M's credit file about the finance agreement, I would say it is fair and reasonable that Zopa must help Mr A in asking the lender to remove this information. Also, and if necessary, I would also say it is fair and reasonable that Zopa must help Mr M in registering a notice of correction on his credit file. But, as far as I am aware, the P2P agreement has been marked as settled. If this is not the case I will look again at this point in my next decision. But to manage Mr M's expectations, Zopa is not the debt owner so it cannot tell the credit reference agencies to change the information it [(the debt owner)] might have registered about the finance agreement. To be clear marking a debt as settled is not negative information"

I invited both Mr M and Zopa to respond to my provisional decision should they wish to do so. As far as I am aware we have received no response from Zopa. Mr M did respond to reject the provisional decision. In summary, Mr M thanked us for my provisional decision. Mr M explained how emotionally difficult it has been and still is, to deal with his complaint and why that was. In addition, Mr M suggested the way Zopa went about its assessment before lending to him was inappropriate. He rejected what Zopa had told us about him indicating to it that he wanted the P2P agreement to consolidate debts. He suggested he had no realistic prospect of ever being able to repay the P2P agreement, at the time he took it out.

Further, Mr M reiterated points he had made before about why he blames Zopa, amongst others, for the adverse events in his life. He repeated that his parents made the payment that settled his IVA.

Mr M mentioned his credit file from 2018 of which we have a copy. He told us that Zopa had registered a default against his account and he wanted this removed. He underlined he wants his voice to be heard and his concerns understood.

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 Mr M for his very candid response to my provisional decision. And I don't underestimate how upsetting he has found it to go over a period of his personal history that he finds painful. We would not have asked about any of this if had not been strictly necessary to investigate his complaint. I also can well understand why he wants his voice heard and his concerns understood, he is entitled to expect that from this service. I wish to reassure him I have heard his voice and thought about his concerns, just as I have done for Zopa.

I've reviewed the complete file again thought about what Mr M has said in response to my provisional decision and revisited my provisional decision.

It has been particularly helpful that Mr M took the time to set out his view on the reasoning and the redress which I proposed in my provisional decision, so that I have been able to gain a fuller understanding of his position and concerns.

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.

I appreciate that Mr M has suggested that Zopa's pre lending assessment was flawed. I also take on board that Mr M tells us he did not tell Zopa that the purpose of taking out the P2P agreement was for debt consolidation. These points go to whether Zopa assessment went far enough. However, I have already found in my provisional decision that Zopa did not carry out a proportionate assessment, based on sufficient information, of whether Mr M could afford to repay the P2P agreement with P in a sustainable manner. In addition, I also found that it was irresponsible of Zopa to pass Mr M's details to P so it could lend to him. It appears both parties now accept those findings. This means I don't have to revisit these points.

I don't doubt that it was very tough indeed for Mr M when his marriage broke down, he almost lost his house and he entered into the IVA. Although I just don't have enough detail about any of this especially the reason for entering into the IVA to be able to say that is fair or reasonable to say Zopa caused these events and therefore Zopa must take responsibility for the impact of these events on Mr M.

Moreover, it remains the case that Mr M was able to short settle the debt with Zopa and therefore Mr M did not ever pay off a substantial part of the capital. It does not help his position that his parent's settled the IVA because this means a third party (by which I mean his parents) not he made the financial loss. I say this because nothing Mr M tells me suggests he repaid his parents. I don't say this to upset Mr M still further, far from it. But I must look at the whole picture when deciding what redress is appropriate.

I can see that a default and late/missed payments have been marked on Mr M's credit file in relation to the P2P agreement. I find as I did in my provisional decision that it is fair and reasonable that Zopa must do what it reasonably can to get this information removed. The difficulty here is that P is the lender not Zopa, as far as I am aware only P can ask the credit reference agencies to remove this information. P is not a party to this complaint so I can't require it to do anything. But I think Zopa must take reasonable steps to help Mr M ask P to do this. Further, if Mr M wants to add a notice of correction to his credit file, for example to give details about the findings in this decision Zopa must help him to do that too. Zopa must reimburse the costs Mr M incurs with the credit reference agencies (if any) in getting this done. Once the information has been updated Zopa must also reimburse Mr M for the costs he has to pay the credit reference agencies to get a copy of his credit file. This is so he can see what his up-to-date credit file says without having to ultimately pay for this himself.

It follows that I have come to the same conclusions for the same reasons as I set out in my provisional decision and also for the additional reasons I have set out in this final decision.

My final decision

My final decision is that Zopa Limited must take reasonable steps to assist Mr M to ask P to ask the credit reference agencies to remove the negative information it has asked them to register on Mr M's credit file about the P2P agreement. It must also help Mr M if he wants to add a notice of correction about the agreement to his credit file. Zopa Limited must reimburse Mr M for any costs he incurs with the credit reference agencies in getting this done. Once the credit file information has been updated it must also reimburse Mr M for any

costs he incurs with the credit reference agencies in order to obtain a copy of his up-to-date credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 April 2022.

Joyce Gordon
Ombudsman