

Complaint

Mrs S says that Zopa Limited (“Zopa”) unfairly refused to change the date for her monthly loan repayment and unfairly recorded adverse information on her credit file.

Background and my provisional decision of 18 March 2022

One of our investigators looked into Mrs S’ concerns. He also initially considered whether Zopa failed to make reasonable adjustments when notified of Mrs S’ additional requirements, as well as her complaints about the failure to change her monthly payment date and Zopa recording adverse information on her credit file. The investigator initially thought that Zopa had acted unfairly in relation in failing to make reasonable adjustments, failing to change Mrs S’ payment date and also recording adverse information on her credit file.

Both Zopa and Mrs S appear to have accepted the investigator’s findings in relation to Zopa’s failure to make reasonable adjustments when notified of Mrs S’ additional requirements. But Zopa disagreed with the investigator’s view on the change of payment date and removing any adverse information from Mrs S’ credit file. In its view, Mrs S unilaterally changed her payment date and it was entitled to treat this as an early partial settlement. As Mrs S then didn’t return to making her contractual monthly payments, missed payments were recorded on her credit file. This was a view which persuaded our investigator and he issued a revised opinion confirming this.

Mrs S disagreed with the investigator’s revised findings and asked for an ombudsman to review her case.

On 22 March 2022, I issued a provisional decision setting out my initial findings on Mr S’ complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

The information put before me and in particular the statement of account provided suggested that Mrs S has never been in a position where she’s owed Zopa more than she was scheduled to owe, at any given period during the agreement. So I found it somewhat odd for Zopa to have recorded adverse information on Mrs S’ credit file in these circumstances.

Both Zopa and our investigator said that this was because Mrs S’ first payment was made early on 15 June 2020 instead of 29 June 2020 and this meant it was treated as an overpayment rather than a contractual payment. Zopa relied on the loan contract to support its position and in particular the section entitled ‘Repayments’ which said:

“You will pay the Total Amount Payable in 60 monthly repayments of £337.86 each.

The first such Repayment will be due and payable one (1) month after the date on which we initiate payment of the net amount of the loan proceeds to you (as confirmed to you in writing at the time). Each subsequent Repayment shall be due and payable on the same date of each consecutive month thereafter (“the Repayment Date”). All Repayments are to be made in accordance with Clause 2 of the Loan Conditions.”

The contract also contains a section entitled '2. Payment'. Subsection 6 says:

"a. You can change the Repayment Date by notifying Zopa that you wish to do so and specifying the new date within the month upon which you wish your repayments to take place. Such requests may be made by logging-in to your Zopa account and following the instructions there, or by email to contactus@zopa.com or by calling us at the general contact number shown on the Lending Platform (such calls will be recorded to confirm your consent to the change)."

b. Depending on whether the revised Repayment Date is before or after the original Repayment Date in the month, the amount of your next Repayment on the new Repayment Date will be adjusted to take account of the number of days between the new Repayment Date and the previous one. The remaining Repayments (assuming no further changes) will revert to the usual Repayment amount."

Zopa said that the repayment section of the contract together with Mrs S' loan being paid out on 29 May 2020 meant that her first payment was due on 29 June 2020. And as Mrs S didn't want to incur a cost for changing her repayment date and instead unilaterally chose to make her payments on a day which suited herself, the payments weren't made on the repayment date set out on her loan contract and were therefore late.

I thought about what Zopa had said. But I wasn't persuaded by its argument for a number of reasons. Firstly, subsection 6 of the payments section of the contract clearly stated that Mrs S could request a change to her payment date by email by specifying the new date within the month upon which she wished her repayments to be made. And the correspondence provided indicated that Mrs S asked for her payment date to be changed from the 29th of each month as far back as 1 June 2020.

Zopa said Mrs S didn't consent to the change because she didn't want to pay the extra charge due for changing the payment date. But it was unclear to me what charge Zopa believed it was entitled. I couldn't see that the contract set out an administrative fee for making such a change. And as Mrs S was bringing her payment date forward rather than pushing it back, if anything Mrs S would have been entitled to make a lower initial payment to account for the earlier payment date, rather than it being the case that Zopa was entitled to levy an additional charge. So I didn't think that it was fair and reasonable for Zopa to argue that it didn't carry out, what appeared to me to be a clear, request because Mrs S didn't consent to an additional charge, when an additional charge wasn't due.

I also gave thought to the fact that Zopa may have decided to argue that Mrs S' request to change her payment date wasn't made in the form prescribed in the contract. I didn't know if Mrs S' request was made in the form prescribed in the contract as Zopa hadn't provided the email address Mrs S sent her emails to. But even if Mrs S' emails weren't sent to the address detailed on the contract, given Zopa was also on notice that Mrs S had additional requirements (because she struggled to read information on a computer screen) which it needed to make reasonable adjustments for, I was satisfied that it, in any event, ought to have actioned the request to change the payment date. So I was minded to conclude that Zopa failed to act fairly and reasonably by failing to formally change Mrs S' payment date.

I also went on to add that even if Mrs S' payment date wasn't properly requested, for the sake of completeness I went on to make it clear that I didn't consider this to be the case, I, in any event, didn't think that this meant Zopa was entitled to treat Mrs S' 15 June 2020 payment as an early partial settlement.

I said this because section 3 of Mrs S' loan contract was entitled 'Early Settlement'. And subsection 1 of the agreement stated:

“You may at any time settle your Loan Contract early and end the Loan Contract in whole or in part by following the instructions set out in your Zopa account or as notified by the Collection Agency and repaying the full or partial amount you wish to repay.”

As I understood it, Mrs S’ 15 June 2020 payment was made via standing order. And after she had clearly said that she considered the payment to be her monthly loan payment, I didn’t think it was fair and reasonable for Zopa to on the one hand argue that it refused to accept Mrs S’ 15 June 2020 payment as her June 2020 monthly repayment, because it wasn’t made in the form prescribed in her contract; yet also argue it was entitled to treat the payment as an early partial settlement when it also didn’t appear to have been made in the prescribed form for that either. And this was in circumstances where Zopa had clear evidence – namely Mrs S’ previous emails and the payment being the amount of the contractual monthly payment - to suggest that this wasn’t what the payment was for either.

In these circumstances, I thought that even if Zopa did believe that Mrs S hadn’t formally consented to changing her repayment date, by this stage I’d already explained why I didn’t agree with this, Zopa nonetheless, ought fairly and reasonably to have treated the payment it received as an advance monthly payment rather than an early partial settlement.

I was also concerned by Zopa’s decision to record adverse information on Mrs S’ credit file. I was concerned by this because the purpose of a credit file is to provide lenders with a summary of how well a customer is managing their finances. In this case, Mrs S was never behind in terms of the amount that she had to pay to Zopa. In fact, given Mrs S was making her payments early and bearing in mind the likely amortisation schedule at the outset of the loan, I thought that Mrs S was almost certainly ahead of where she would now be in terms of her payments.

So recording adverse information on Mrs S’ credit file, in these circumstances, bearing in mind this inferred that she wasn’t managing her finances well seemed to me to not only be logically fallacious but also, arguably mean spirited, and not in keeping with treating Mrs S fairly. And Zopa recording adverse payment information on Mrs S’ credit file in the circumstances that it left me intending to issue a final decision finding that it failed to act fairly and reasonably towards Mrs S in relation to this.

Overall and having carefully considered everything, I was minded to issue a final decision which found that Zopa failed to act fairly and reasonably in its dealings with Mrs S. This was because I was minded to conclude that it unfairly refused to change Mrs S’ monthly loan repayment date and it also acted unfairly and unreasonably towards Mrs S by recording adverse information on her credit file.

As I was minded to conclude that Mrs S lost out as a result of Zopa’s actions, I then set out a method of putting things right.

Responses to my provisional decision

Mrs S confirmed receiving my provisional decision and her agreement with my findings.

Zopa also confirmed receiving my provisional decision and its agreement with the outcome. It said it could arrange to amend what it reported on Mrs S’ credit file and make the compensation payment. But it needed to speak to Mrs S or email her to change the payment date. And it couldn’t restructure Mrs S’ loan. That said, there was no detriment to Mrs S as she was never charged any late payment fees and interest has only ever been charged on the outstanding capital amount.

My findings

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

I thank the parties for their responses. And I'm pleased to see that Zopa has agreed with my conclusions.

I'm also satisfied that what it has proposed to do in terms of getting in contact with Mrs S to change her repayment date and its confirmation that no rework of the loan is necessary because Mrs S will still make the same monthly payments, is fair and reasonable in the circumstances.

As this is the case, and as neither party has provided any further arguments regarding the conclusions I reached, I've not been persuaded to alter the conclusions I reached in my provisional decision. So I'm still upholding Mrs S' complaint and Zopa should put things right in the way I've set out below.

Fair compensation – what Zopa needs to do to put things right for Mrs S

I've already explained that Zopa should have changed Mrs S' payment date in June 2020. As far as I can see, Mrs S has made all of her payments on the 15th of each month since then. So Zopa should get in contact with Mrs S (via an appropriate method) and formally change Mrs S' monthly payment date to the 15th for the remaining payments on the loan. Zopa also needs to remove any missed payment or other adverse information it has recorded on Mrs S' credit file as a result of this loan too.

I know turn to compensation for the distress and inconvenience Zopa's actions has caused Mrs S. Zopa has already accepted that it should pay Mrs S £100 for the delay in making reasonable adjustments when notified of Mrs S' additional requirements. I've not seen anything to suggest that the adverse information recorded on Mrs S' credit file caused her additional losses – such as preventing her from obtaining credit she would have otherwise been able to obtain.

But I think that the recording of this information clearly caused Mrs S additional stress and worry – certainly at a level above the levels of frustrations and annoyance one might reasonably expect from day-to-day life – and she did make repeated attempts to try and address this matter with Zopa. Bearing all of this in mind, I think that Zopa should pay a further £250 (in addition to the £100 it has already agreed to pay) in compensation for the distress and inconvenience it failing to act fairly and reasonably towards Mrs S caused.

So overall and having thought about everything, I think that it would be fair and reasonable in all the circumstances of Mrs S' complaint for Zopa to put things right by:

- Getting in contact with Mrs S' and changing her monthly payment date to the 15th of each month going forwards.
- Removing all adverse information recorded on Mrs S' credit file as a result of this loan.
- Paying Mrs S a total of £350 in compensation (including the £100 it has already agreed to pay) for the distress and inconvenience it failing to act fairly and reasonably towards Mrs S caused.

My final decision

For the reasons I've explained above and in my provisional decision of 18 March 2022, I'm upholding Mrs S' complaint. Zopa Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 27 April 2022.

Jeshen Narayanan
Ombudsman