

## **The complaint**

Mr T is unhappy that Zopa Limited recorded a default marker on his credit file at the credit reference agencies. He would like them to remove it.

## **What happened**

Mr T was granted a loan of £5,000 by Zopa in February 2020 over a term of five years with monthly repayments of £127.83.

Mr T called Zopa after he failed to make his loan repayment in September 2021. He told them he was struggling to make his repayments due to changes in his financial circumstances and was seeking help from a debt advice charity.

Mr T says the debt advice charity had advised him to inform Zopa he should be able to repay any arrears and bring his repayments up to date by April 2022. He was planning to secure a re-mortgage to clear his debts, including the loan with Zopa.

Mr T says he received a text message from Zopa on 4 January 2022 informing him a notice of default would be issued and to avoid that, he should either repay the outstanding amount or call them. So, Mr T called Zopa on 5 January 2022. He says that Zopa told him he could repay what he owed and avoid the default. But they then changed their mind and told him a default had already been recorded on his credit file.

Mr T wasn't happy with Zopa's actions, so he complained to them. He said they'd failed to communicate and hadn't told him they were issuing a default. He couldn't understand why their text message suggested a default hadn't yet been issued and recorded when it already had.

Zopa investigated Mr T's complaint and responded on 12 January 2022. They said during telephone discussions with Mr T in October 2021, he'd promised to address his arrears by making two separate payments in November and December 2021. But neither those payments nor Mr T's contracted loan repayments were received as promised.

Zopa said they'd sent a Notice of Default to Mr T's home address on 16 November 2021, but Mr T said he hadn't received that. Zopa apologised if the text message he received in January 2022 was misleading. They said this had been generated on 27 December 2021 but was delayed due to the bank holiday period. Zopa said they'd delayed issuing formal demand and registration of the default to allow him to fulfil his promise to pay. But as the promised payments weren't received, they sent formal demand. They didn't agree they'd done anything wrong by recording a default.

Mr T wasn't happy with Zopa's response to his complaint. So, he decided to refer matters to this service. Having considered Mr T's complaint, our investigator didn't think Zopa had done anything wrong or treated Mr T unfairly.

Mr T didn't agree with our investigator's findings. He didn't believe Zopa had sent a default notice to him and wanted this service to obtain evidence of its despatch from Zopa. As an agreement couldn't be reached, Mr T's complaint has been passed to me to consider.

## **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.

From the information available, I don't think there is any dispute that Mr T failed to maintain repayments under the original loan agreement. However, in reaching my decision, I wanted to be clear about what Mr T told Zopa and what was agreed as a consequence.

I've looked at the file notes Zopa recorded on their systems each time there was contact, or attempted contact, with Mr T. These show that Zopa attempted to call Mr T on numerous occasions during August, September and October 2021. They left voicemail messages for Mr T on at least 12 occasions before Mr T called them on 7 October 2021.

I've listened to a recording of that call. Mr T told Zopa about his financial difficulties and his referral to a debt advice charity. Zopa were very clear that Mr T's loan was one month in arrears. They clearly explained the consequences this would have on his credit file and that missing three repayments would lead to them sending a Notice of Default ("NoD"). They also said that missing four repayments would lead to a default being registered on Mr T's credit file. Mr T confirmed he understood.

I've listened to a further call recording from 29 October 2021. Zopa told Mr T that his loan was now two months in arrears. Mr T promised to clear half the arrears in November and the remainder by Christmas (2021). He also said he would make his contracted loan repayments in the meantime. Zopa recorded a *"promise to pay"* by 27 December 2021 on their file and confirmed this would stop further calls chasing payment. They explained to Mr T how he could make the payments over the telephone and also offered to provide bank details, if required. Zopa also reminded Mr T of the circumstances under which a NoD might be issued.

Zopa's file notes show no further contact from Mr T until 5 January 2022. Despite Mr T's assurances, Zopa's files suggest they received no further payments from him. So, they sent him a NoD dated 16 November 2021, as three repayments had now been missed. That's what I would expect them to do here.

Mr T says he didn't receive that letter. Zopa have provided this service with a copy. The letter appears to have been addressed correctly and supports both what they told Mr T and what's shown in their files at the time. So, while I acknowledge what Mr T says, I persuaded that the letter was sent. And by sending it, Zopa met their regulatory obligations. Even if it wasn't received by Mr T, I can't reasonably hold Zopa responsible as they wouldn't have had any control over its ultimate delivery to his address.

The Information Commissioner's Office (ICO) issue guidance and principles for the reporting of arrears, arrangements and defaults at credit reference agencies. It says that as a general guide, *"a default may be recorded when you are three months in arrears, and normally by the time you are six months in arrears"*. From the information I've seen, it appears Mr T's account met this requirement. And as this is a default trigger, I think Zopa were obliged to issue a default notice and record this on Mr T's credit file.

Mr T suggests he'd told Zopa of his intention to re-mortgage and use the proceeds to repay what he owed them. I've listened to a recording of Mr T's call to Zopa on 5 January 2022. Mr T confirmed he told Zopa this during the call on 29 October 2021. I realise Mr T may be disappointed, but I don't agree. At no point during the calls in October 2021 did I hear Mr T mention his intention to re-mortgage. And even if he had, Zopa would still have been obliged to issue the NoD and record a default. They wouldn't have been able to defer that until Mr T arranged his re-mortgage in 2022.

I do appreciate that Mr T's change in financial circumstances would've been a very difficult time for him. And I think he did the right thing by speaking with Zopa and seeking guidance and support from a debt advice charity. But it seems he didn't maintain repayments or repay the arrears as he'd promised. So, I can't reasonably say that Zopa did anything wrong when they recorded a default. They were obliged to do that.

Mr T is unhappy that a text message Zopa sent to him on 4 January 2022 suggested he could call them to stop the default being recorded on his credit file. He also said that during the call on 5 January 2022, Zopa at first told him a default hadn't been recorded. But later changed their mind. I accept the text message was potentially misleading. But, I'm comfortable that Zopa have acknowledged and explained this in their final response to his complaint.

While Mr T says he didn't receive the NoD, I don't think Zopa's actions should've come as a surprise to him. They'd been consistently clear about the circumstances under which a NoD would be issued and ultimately registered on his credit file. And while I realise Mr T will be disappointed, I'm not persuaded that Zopa ultimately did anything wrong.

### **My final decision**

For the reasons set out above, I don't uphold Mr T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 12 October 2022.

Dave Morgan  
**Ombudsman**