

## The complaint

Mr C complains about a finance agreement he took out with Zopa Limited ("Zopa").

## What happened

In July 2019 Mr C entered into a finance agreement with Zopa. Under the agreement Mr C borrowed £10,000 the agreement was to last for 36 months. Mr C's monthly repayments were £424.30. The purpose of the loan was debt consolidation.

Mr C complains that Zopa ought not to have lent to him as the lending was unaffordable. Specifically, Mr C considers that the finance was unaffordable primarily *"because of the very high interest rate and fees that came along with it"*. He indicates that at the time that Zopa lent to him he already had *"a poor credit rating with high credit utilisation and a history of payday loans and defaults."*

Further, Mr C tells us he was only able to make repayments to the finance agreement for three months before he fell behind on his repayments. He tells us he then went into a debt management plan ("DMP"). However, the DMP has now ended.

Given, that Mr C thinks that Zopa was in the wrong to lend to him at all, he has asked that he be allowed to repay the money he owed but without paying interest or charges he also wants a refund of the £400 admin fee.

Zopa does not agree that it did anything wrong. Rather, it outlined the steps it takes before lending, in its opinion it has a *"very strict lending criteria"*. It goes on to say when assessing an application to borrow from it, it considers a number of factors. These factors include, but are not limited to, information from credit reference agencies, how the consumer has managed pre-existing debt, debt to income ratios, and the information provided by the consumer. Further, Zopa suggests it also looked at Mr C's bank details, employment information, his payslip, and a bank statement. Based on all the information it gathered, Zopa concluded that Mr C could afford to borrow the £10,000 from it. Moreover, it indicated that the interest, charges, and admin fee were all part of the contract. By signing the contract Mr C had agreed to pay these. For all of these reasons, Zopa did not agree that it had done anything wrong. It followed that it was not prepared to take the action that Mr C had requested.

Dissatisfied, Mr C complained to our service.

Once Mr C's complaint was with us, he provided some further information. He indicated that in the months before he entered into this agreement, he had already gone over his credit limits on all of his other accounts. Mr C also told us that prior to entering into the finance agreement he had been using his £2,000 authorised overdraft with a third-party, who I will call "H". Mr C let us know that he also had other informal debts outstanding which he owed to a friend and to a relative. These two debts were interest free. In Mr C's opinion Zopa made his financial situation worse because he replaced his interest free loans with Zopa's loan which came with what he sees as high interest and high charges. However, Mr C also told us he paid off these two loans not with the Zopa loan but by selling his car, and by using a bonus from work.

In addition, Mr C also raised a new matter. He told us that in June 2021 Zopa had told him that it had written-off the balance of the loan. Mr C said he then stopped the DMP because

Zopa was the only remaining creditor. But then he was contacted by a third-party business who I will call "C". C told him it had purchased the debt from Zopa and began to chase him for it. He wanted to know it seems if Zopa had acted correctly specifically whether Zopa could sell on the debt under a finance agreement after he had been told the debt had been written-off.

I considered Mr C's complaint and I issued a provisional decision. In that provisional decision, this 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.*

*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 have found that Zopa's checks did not go far enough*

*When Zopa lent to Mr C it was a regulated business providing regulated finance. That meant it had certain obligations to fulfil before it lent to him. Under the relevant regulations at that time Zopa was obliged to make sure that its lending was affordable and responsible. In particular, it was required to carry out checks that were proportionate in the circumstances, which might include considerations about the amount borrowed and Mr C's borrowing history.*

*That said, exactly what a lender should consider was for each lender to decide, however, the rules listed a number of factors which a lender such as Zopa might have wished to consider. Further, Zopa had to be able to demonstrate that it did enough to ensure that Mr C could repay the borrowing in a sustainable manner without it adversely impacting on his financial situation. This assessment needed to be borrower focused. Taking into account the relevant rules, guidance, good industry practice and law, I think there are some overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These questions are:*

- Did Zopa complete reasonable and proportionate checks to satisfy itself that Mr C be able to repay the loan in a sustainable way? If so, did it make a fair lending decision?*
- If not, would those checks have shown that Mr C would've been able to repay the loan in a sustainable way?*
- Did Zopa act unfairly or unreasonably in some other way?*

*If I conclude that Zopa didn't act fairly and reasonably in its dealings with Mr C and that he has lost out as a result, I'll go on to consider what is a fair way to put things right.*

*As set out above, the regulatory framework requires Zopa to have carried out a proportionate assessment, based on sufficient information, of whether Mr C could afford to repay the loan with it in a sustainable manner. This affordability assessment had to be borrower focused in the sense that rather than focusing on the credit risk for Zopa the assessment needed to have sufficient checks to satisfy it that Mr C would be able to repay the finance sustainably, without the repayments having a significant adverse impact on Mr C's financial situation.*

*Zopa told us what checks it carried out before it lent to Mr C. Zopa indicated that, amongst other things, it had requested and reviewed information about Mr C from both Mr C directly and from credit references agencies, it looked at how his pre-existing debt had been managed by him and also it took into account debt to income ratios based on the data it gathered. Moreover, Zopa also looked at what Mr C was actually earning and one bank statement. I appreciate that this information would have given Zopa insight into Mr C's actual income and expenditure.*

*That said, Mr C suggests that Zopa did not take proper account of his pre-existing debt. As I have already mentioned he indicates that he was not managing his debt before he took on new debt and Zopa should have realised this and asked him more about this. Specifically, he suggests that he exceeded the credit limits of all of his credit accounts, was using payday loans inappropriately and that he was using the authorised overdraft of one of his two current accounts.*

*From the information I've seen, Mr C had indeed recently exceeded the credit limits of some of his accounts. In particular, from the information about his credit file that I have available to me, at the time Mr C applied for the finance he had gone over his credit balance on several of his credit card accounts. The fact that Mr C had gone over these available balances could have indicated that Mr C was struggling especially since we are talking about more than one account here.*

*Also, I can see there were a number of payday loans that appeared to have been taken out and paid off over the course of 2017 and 2018. But the mere fact that he was using payday loans does not, by itself, suggest Mr C was taking on too much debt. Especially since the payment history of these debts was satisfactory and they were not recent.*

*However, I can also see Mr C was using his agreed overdraft facility on one of his two current accounts. He had a current account with "H". This account appeared to move in and out of the overdraft facility although it seems it was mainly overdrawn. The other current account was with a third party I will call "S". This account was in credit at the time. It seems Mr C supplied Zopa with a statement for this account when he applied for finance with it.*

*I can see why Zopa thought it had done enough Mr C's situation was finely balanced. However, I take account of the fact that Mr C wanted to borrow a relatively large amount over a relatively long time. Moreover, some of the information indicated that Mr C was having issues managing his existing credit. In the circumstances, given the very individual details of this complaint, I find that Zopa's checks did not go far enough.*

*Why I have not found that the lending was unaffordable*

*That said in order to uphold Mr C's complaint I have to be satisfied that if Zopa had carried out the checks it should have done, it would have found that Mr C could not afford to borrow from it. The situation here is not clear-cut. On the face of it when I look at Mr C's income and his essential expenditure his income was sufficient to cover the repayments from Zopa. Also, Mr C's payment history for this finance did not suggest the lending was unaffordable. He was able to make his initial repayments seemingly paying from his income rather than using still more credit to repay this credit.*

*Mr C has suggested that we did not take account of his informal borrowing from his family and his friend when calculating if he could afford to repay Zopa. He indicates that when these repayments were considered, he did not have sufficient disposable income for day-to-day living.*

*But Mr C has provided us with inconsistent information about these informal loans. At first, he did not mention these loans at all. Then he indicated that he paid off these debts with the new money he borrowed from Zopa. If that was so, then it seems that his repayments to Zopa were lower than his monthly repayments for his informal borrowing. If this is what happened, then he did apparently have sufficient for day-to-day living. Then he suggested that the informal lending repayments continued even after he took out the finance with Zopa. Mr C suggested his informal lending was paid off later by selling his car and with a bonus from work. Further, I have not seen information to show that Mr C was obliged to continue making these repayments even after he took out the loan with Zopa, in any event. These inconsistencies have impacted on the weight I have been able to give to Mr C's*

*stance in relation to these debts However, should Mr C want to explain these inconsistencies I will look at and think about his reply before I issue my next decision.*

*Moreover, Mr C had significant sums of money coming into his account such as a payment of around £4,400 in June 2019 and a payment of around £2,500 in April 2019 and I've seen no explanation for these sums or why they ought not to be considered as part of Mr C's income. When I take on board these payments it further strengthens the suggestion that Mr C could afford the lending. Nonetheless should Mr C want to provide an explanation for these sums I will consider what he says before I issue my next decision.*

*Further, the thrust of Mr C's complaint has evolved over time. He told us his initial complaint was that the interest and the charges were too high for the Zopa finance. But whilst the interest and charges might have been higher than other lending nothing, I have seen persuades me that Mr C couldn't afford to make the repayments simply on the basis that when the interest and charges were taken into account this made the lending unaffordable..*

*In the circumstances, I've no proper basis for saying that the lending was unaffordable.*

*Mr C has now raised the issue of the debt being both written-off apparently and then being sold on. This appears to be a new matter and has not been considered by Zopa in its final response to Mr C or investigated within this complaint. It follows that I am unable to look at this matter in this decision.*

*Both Mr C and Zopa now have till the due date set out above to send in any further information, should they wish to do so. All I would add is that any final submissions should be materially new. Neither party needs to repeat what it's said to us before."*

Finally, I said that provisional decision was:

*"My provisional decision is that I don't currently intend to uphold Mr C's complaint".*

As far as I am aware Zopa did not respond to the provisional decision, however Mr C did respond. In summary, Mr C reiterated his previous stance that the lending was not affordable. Specifically, Mr C indicated that his finances were in such a state of disarray when Zopa lent to him that it ought to have realised this. Further, as a result, it should not have lent to him. Mr C highlighted again that several months after he took out the loan, he entered a debt management plan and he suggested this shows the lending was not affordable. Mr C explained that the £2,500 I'd mentioned was his salary, he could not recall what the £4,400 was for.

Moreover, Mr C explained that any apparent inconsistencies in his recollections and any apparent changes in the nature of his complaint were simply due to the fact that he was trying to recall events from three years ago. Moreover, he pointed out he was also just trying to answer the questions we had raised.

### **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 C for his response to the provisional decision. I've thought about what he said, and I've also looked at the file for this complaint again.

The remaining issue here seems to be was the lending affordable. Mr C's very strong position is that the lending was not affordable, Zopa's stance is that it was affordable.

I don't agree that Mr C's finances before Zopa lent to him were in such a situation that on the face of it Zopa ought not to have lent to Mr C. I already went through this point in great detail in the provisional decision and therefore I think there is no benefit in repeating the same reasoning again here given Mr C is not raising new points but repeating his previous ones.

Mr C suggests his debt management plan means that the lending from Zopa was unaffordable in that from his perspective, the lending inevitably led to the need for the plan. Mr C did enter into a debt management plan; however, it does not seem on balance that it was this lending that led inevitably to that and therefore by extension I should find the lending was unaffordable. Rather, I note that Mr C did not take out the loan with Zopa and then immediately enter into the debt management plan there was a gap of several months between the two events.

Mr C has given further information about the sums of money coming into his account. I realise that it can be difficult to recall details about finances years after the event. However, I have to be satisfied that I have a full enough picture of Mr C's financial situation at the time to look at the issue of affordability fairly. Mr C has not been able to explain one of the large payments into his account or explain why this money ought not to have been treated as income. In the circumstances, the unexplained large payment into his account which directly impacted on his ability to make his repayments strengthens the finding that he could afford the repayments.

I can well understand that Mr C felt obliged to answer the questions we raised. But I don't think this explains the inconsistencies I mentioned in the provisional decision. For example, nothing we asked about explains why Mr C did not initially mention his informal loans and then told us different things about how he'd paid off these loans and how his finances were impacted.

I have not been persuaded by Mr C's responses to the provisional decision. It follows that I have reached the same conclusions for the same reasons as I set out in the provisional decision and repeated again above.

### **My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 August 2022.

Joyce Gordon  
**Ombudsman**