DRN-3587251

Complaint

Mr T has complained that Zopa Limited ("Zopa") unfairly and irresponsibly arranged an unaffordable loan for him. He says he was lent too much given his credit score.

Background

Zopa operated the electronic system in relation to lending which led to Mr T being provided with a loan in January 2015. The loan was for £10,000.00 and the total amount of £16,116.58, which included interest, fees and charges of £6,116.58, was due to be repaid in 48 instalments of £272.05. Mr T ran into difficulty making his payment and the outstanding balance on the loan was sold to a third-party debt purchaser.

Mr T's complaint was reviewed by one of our investigators. She didn't think that reasonable and proportionate checks would have shown Zopa that Mr T wasn't in a position to sustainably repay this loan at the time it was arranged. And so she didn't recommend Mr T's complaint be upheld.

Mr T disagreed with our investigator's view and asked for an ombudsman to look at his complaint.

My findings

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

We've set out our general approach to complaints about unaffordable/irresponsible lending - including the key rules, guidance and good industry practice - on our website. And I've referred to this when deciding Mr T's complaint.

Having carefully thought about everything, I think that there are two overarching questions that I need to answer in order to fairly and reasonably decide Mr T's complaint. These questions are:

- Did Zopa complete proportionate checks to satisfy itself that Mr T would be able to meet his obligations under the P2P agreement in a sustainable way?
    - If so, did it fairly conclude that Mr T could sustainably make his repayments?
    - If not, would such checks have shown that Mr T would've been able to do so?
- Did Zopa act unfairly or unreasonably in some other way?

If I determine that Zopa didn't act fairly and reasonably in its dealings with Mr T and that he has lost out as a result, I will go on to consider what is fair compensation.

<u>Did Zopa complete proportionate checks to satisfy itself that Mr T would be able to meet his obligations under the P2P agreement in a sustainable way?</u>

The rules, regulations and good industry practice in place when Zopa brought about this P2P agreement with Mr T required it to carry out a proportionate assessment of whether he could afford to repay his loan in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Zopa had to think about whether repaying the loan sustainably would cause difficulties or adverse consequences *for Mr T*. In practice this meant that Zopa had to ensure that making the payments to the loan wouldn't cause Mr T undue difficulty or adverse consequences.

In other words, it wasn't enough for Zopa to simply think about the likelihood of Mr T making payments, it had to consider the impact of loan repayments on Mr T.

Checks also had to be "proportionate" to the specific circumstances of the application. In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount / type / cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

In light of this, I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- the *lower* a customer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);

- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make payments for an extended period); and

- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances.

I've carefully thought about all of the relevant factors in this case.

Were Zopa's checks proportionate?

Zopa has said that it completed an income and expenditure assessment with Mr T before arranging this loan. It looks like Mr T declared that he was employed and had a monthly income of just under £2,250.00. Mr T also declared that he paid rent of £600 a month and Zopa carried out a credit check to ascertain Mr T's existing credit commitments. The information remaining from the application suggests that Mr T's application was manually underwritten. But there no longer appears to be a record of the underwriting notes. Given the length of time that's passed since the application, I don't think that this is surprising.

Nonetheless, Zopa's notes from the application do clearly indicate that the information gathered about Mr T required manual scrutiny. And as I've not been provided with a record of what that manual scrutiny covered or more crucially what it showed, I can't reasonably say that Zopa's checks before providing this loan did go far enough.

So bearing in mind all of this and what Zopa has been able to provide, I'm not satisfied that it did carry out reasonable and proportionate checks before providing this loan to Mr T.

Would reasonable and proportionate checks have indicated to Zopa that Mr T would have been unable to repay this loan?

As Zopa hasn't been able to properly evidence that reasonable and proportionate checks were carried out before this loan was provided, I can't say for sure what they would've shown. So I need to decide whether it is more likely than not that proportionate checks would have told Zopa that Mr T would've been unable to sustainably repay this loan.

Mr T has now provided us with evidence of his financial circumstances at the time he applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mr T has provided, it doesn't mean it would've shown up in any checks Zopa might've carried out.

But in the absence of anything else from Zopa showing what this information would have shown, I think it's perfectly fair, reasonable and proportionate to place considerable weight on it as an indication of what Mr T's financial circumstances were more likely than not to have been at the time.

Zopa's checks suggested that Mr T had a monthly disposable income of just over £1,070.00. The credit check it carried out showed that Mr T did have some existing revolving credit commitments but they were well maintained and Mr T wasn't excessively indebted. Indeed, Mr T could have consolidated all of his existing debts with this loan if he wished to do so.

Mr T insists that his credit report suggests he only had a limit of £400. I've thought about what Mr T has said. But I think that he has misinterpreted the screenshot he's provided. Firstly, the £400 credit limit relates to the limit on one of Mr T's credit cards. This account showed up on the credit search that Zopa carried out. The screenshot Mr T has provided does not show that he was only able to afford to borrow £400 in the way he's suggesting.

Secondly and most importantly, it is the P2P operator's responsibility to gather enough information and decide whether it is appropriate to lend. While credit checks are likely to pay a part in this, I wouldn't expect a P2P operator to decline an application solely as a result of the credit limit another lender offered or what a credit reference agency determines someone's credit limit to be. Conversely, I wouldn't expect a P2P operator to proceed with an application solely on the basis of such information either.

I've also reviewed the copies of the bank statements Mr T has provide too. And having done so, there isn't anything in them which obviously contradicts what Mr T told Zopa about his circumstances or expenditure at the time. So overall the information I've been provided with about Mr T's circumstances does appear to show that when his committed expenditure and existing credit commitments were deducted from his monthly income, he did have the funds, at the time at least, to sustainably make the repayments due under this agreement.

It's not in dispute that Mr T went on to experience difficulty making his payments. And I'm sorry that Mr T has been unable to repay this loan. The information I've seen suggests that this was due to a change in Mr T's employment situation from 2017 onwards. Mr T has provided his full credit report and this clearly shows that his borrowing increased unsustainably from this point onwards.

But the key thing here is that there isn't anything to suggest that it was clear from the information gathered, or that Mr T told Zopa his circumstances were likely to change. Indeed, I'm not persuaded that even Mr T knew this would happen at this time. So I can't reasonably say that this is something Zopa ought to have accounted for when deciding whether Mr T could afford these monthly payments.

As this is the case, bearing in mind what it had and what any further manual scrutiny is likely to have shown, I think that Zopa was reasonably entitled to conclude Mr T could make his loan payments when it brought about this loan for him - the information gathered from reasonable and proportionate checks are likely to have suggested the repayments were affordable. And I'm therefore satisfied that it wasn't unfair for Zopa to bring about this loan for Mr T.

Did Zopa act unfairly or unreasonably towards Mr T in some other way?

I've carefully thought about everything provided. Mr T believes that Zopa should write off the outstanding balance on his loan as a payment hasn't been made since 2017. I've thought about what Mr T has said but Zopa sold the outstanding balance on his loan to a third-party debt purchaser some time ago. And as it no longer owns Mr T's debt, it simply isn't in a position to write it off – even if it wished to do so.

As this is the case, I don't think that Zopa has unfairly failed to write off the outstanding balance on Mr T's loan and I find that Zopa didn't act unfairly or unreasonably towards Mr T in some other way.

I appreciate that Mr T says he's still experiencing difficulty and that he's unable to repay what he owes. But if that's the case, this is something he needs to contact the third-party debt purchaser about.

Conclusions

Overall and having carefully thought about the two overarching questions, set out on page one of this decision, I find that:

- Zopa can't evidence that it completed fair and reasonable and/or proportionate checks on Mr T to satisfy itself that he was able to repay his loan;
- But fair and reasonable and/or proportionate checks are unlikely to have shown this loan was unaffordable for Mr T at the time Zopa arranged it;
- Zopa *didn't* also act unfairly or unreasonably towards Mr T in some other way.

The above findings leave me concluding that Zopa didn't act unfairly or unreasonably towards Mr T when it brought about his loan in January 2015. And this means I'm not upholding Mr T's complaint.

My final decision

For the reasons I've explained, I'm not upholding 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 15 August 2022.

Jeshen Narayanan
Ombudsman