DRN-3801763

Complaint

Mr J has complained that Zopa Limited ("Zopa") unfairly brought about an unaffordable loan for him.

Background

Zopa operated the electronic system in relation to lending which led to Mr J being provided with a loan in February 2017. The loan was for £12,000.00 and had an APR of 31.1%. This meant that the total amount to be repaid, which included interest, fees and other charges totalling £7,883.21, was due to be repaid in 48 monthly instalments of £414.23.

Mr J's complaint was reviewed by one of our investigators. He thought that Zopa ought to have seen that Mr J wasn't in a position to repay this loan at the time it arranged it. So he upheld Mr J's complaint. Zopa disagreed with our investigator's view. As Zopa disagreed, the complaint was passed to an ombudsman for a final decision.

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 J'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 J's complaint. These two questions are:

These two overarching questions are:

- Did Zopa complete reasonable and proportionate checks to satisfy itself that Mr J would be able to meet his obligations under the P2P agreement in a sustainable way?
  - If so, did it make a fair decision?
  - If not, would those checks have shown that Mr J 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 J and that he has lost out as a result, I will go on to consider what is fair compensation.

Did Zopa complete reasonable and proportionate checks to satisfy itself that Mr J would be able to meet his obligations under the P2P agreement in a sustainable way?

The rules, regulations and good industry practice in place when Zopa brought about this P2P agreement with Mr J required it to carry out a proportionate assessment of whether he could afford to make his repayments. 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 J*. In practice this meant that Zopa had to ensure that making the payments to the loan wouldn't cause Mr J undue difficulty or adverse consequences. In other words, it wasn't enough for Zopa to simply think about the likelihood of Mr J making payments, it had to consider the impact of loan repayments on Mr J.

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 reasonable and proportionate?

Zopa has said that it completed an income and expenditure assessment with Mr J before arranging this loan. It also carried out a credit check to work out what Mr J's existing credit commitments were too. However, I'm mindful that any credit check carried out is likely to have shown that Mr J already had a reasonable amount of existing debt and that was close to his limit on his credit card.

Given the information obtained is likely to have shown the extent of Mr J's existing indebtedness, Zopa's own checks suggest that Mr J had a debt to income ratio of 72.71%, I would have expected Zopa to have taken further steps to verify Mr J's expenditure to ensure he had the necessary funds to repay the loan it was arranging. After all Mr J's indebtedness didn't tally with someone who had the level of disposable income Zopa's checks appeared to suggest. This is especially as it also appears to have accepted that Mr J only had rent or mortgage payments of £100 a month too.

Furthermore, while there's some suggestion the purpose of this loan might have been debt consolidation, it's unclear to me what was going to be consolidated or how this loan was materially going to improve Mr J's financial position.

In reaching this conclusion, I've kept in mind that this was the only loan Zopa arranged for Mr J. But bearing in mind the amount being lent and the total cost, as well as what I've highlighted about the information gathered, I do think that it would have been fair, reasonable and proportionate to have carried out further checks before proceeding in this instance.

As Zopa proceeded with approving this loan without taking further steps to verify Mr J's expenditure, I'm satisfied that the checks Zopa carried out before arranging this loan weren't reasonable and proportionate.

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

As reasonable and proportionate checks weren't 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 J would've been unable to sustainably repay this loan.

Mr J 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 J 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 what this information says as an indication of what Mr J's financial circumstances were more likely than not to have been at the time.

It's also important to note that Zopa was required to establish whether Mr J could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. I say this because Zopa has said that the loan was affordable because Mr J did make his payments and he managed to repay his loan early.

Of course, the loan payments being affordable on a strict pounds and pence basis might be an indication that a consumer could sustainably make the repayments. But it doesn't automatically follow that this is the case. And as a borrower shouldn't have to borrow further in order to make their payments, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to sustainably make their repayments if it is on notice that they are unlikely to be able to make their repayments without borrowing further.

I've carefully considered the information available in light of all of this.

Having done so, it's clear that Mr J was struggling to manage his finances. It doesn't take too much probing and digging to see that the reason for Mr J's difficulties and indebtedness was because he was gambling unsustainable sums of money. And his ability to repay this loan would in large part be dependent on his success as a gambler, which isn't reasonable basis for concluding that Mr J could repay these loans without borrowing further or experiencing significant adverse consequences.

Bearing all of this in mind, I'm satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr J was unlikely to have been able to make the repayments to this loan without borrowing further and/or suffering undue difficulty. And, in these circumstances, I find that reasonable and proportionate checks would more likely than not have alerted Zopa to the fact that Mr J would not be able to sustainably make the repayments to this loan.

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

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Zopa acted unfairly or unreasonably towards Mr J in some other way.

So I find that Zopa didn't act unfairly or unreasonably towards Mr J in some other way.

Did Mr J lose out as a result of Zopa unfairly and unreasonably bringing about his loan?

Mr J had to pay interest, fees and charges on a loan that should never have been arranged for him. So I find that Mr J did lose out because Zopa unfairly arranged this loan.

Fair compensation – what Zopa needs to do to put things right for Mr J

Having considered everything, I think it is fair and reasonable for Zopa to put things right for Mr J by:

- removing all interest, fees and charges applied to Mr J's loan from the outset. The payments Mr J has made, whether to Zopa or any other party, should be deducted from the £12,000.00 he was originally lent. Zopa should treat any payments made if and when the £12,000.00 has been cleared as overpayments. And any overpayments should be refunded to Mr J along with 8% simple interest †;

- adding interest at 8% per year simple on any overpayments, if there are any, from the date they were made by Mr J to the date the complaint is settled†;

- removing any adverse information recorded on Mr J's credit file as a result of this loan should no outstanding balance remain.

† HM Revenue & Customs requires Zopa to take off tax from this interest. Zopa must give Mr J a certificate showing how much tax it has taken off if he asks for one.

My final decision

For the reasons I've explained, I'm upholding Mr J's complaint. Zopa Limited should put things right for Mr J in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 29 December 2022.

Jeshen Narayanan
Ombudsman