

The complaint

Mr M complains Zopa Bank Limited irresponsibly arranged him with two unaffordable loans.

What happened

Zopa Bank arranged the following loans for Mr M:

Loan	Date of loan	Capital amount	Term (months)	Monthly repayments	Total repayable value
Loan 1	October 2020	£3,000	24	£140 (approx.)	£3,300 (approx.)
Loan 2	July 2021	£5,200	60	£120 (approx.)	£7,200 (approx.)

Mr M complained to Zopa Bank in August 2022. He said had Zopa Bank completed reasonable and proportionate checks it would have identified these loans were unaffordable for him. Zopa Bank issued its final response and didn't uphold the complaint, so Mr M brought it to our service for review.

Our investigator reviewed the complaint and upheld it in part. She said Zopa Bank had completed proportionate checks and made a fair lending decision when arranging loan one. But she considered it hadn't completed proportionate checks or made a fair lending decision when arranging loan two. She said this because she considered proportionate checks ought reasonably to have identified loan two wasn't affordable for Mr M.

Mr M agreed with our investigator's assessment; Zopa Bank responded and said it didn't accept the outcome. It said its checks were automated and the information it obtained as part of its checks didn't cause it concern; or suggested a manual intervention or further information was needed. It maintained its argument that it therefore made fair lending decisions when arranging both loans.

Zopa Bank asked for an ombudsman's review, so I've been passed the complaint to decide.

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.

Having done so, I've reached the same conclusion as our investigator, and for broadly the same reasons.

We've set out our approach to complaints about irresponsible and unaffordable lending as well as the key rules, regulations and what we consider to be good industry practice on our website.

Zopa Bank needed to take reasonable steps to ensure it responsibly arranged this lending for Mr M. The relevant rules, regulations and guidance at the time Zopa Bank arranged the lending required it to carry out reasonable and proportionate checks. These checks needed

to assess Mr M's ability to afford the loan and repay it sustainably over its term, without causing him financial difficulties or harm.

There isn't a set list of checks Zopa Bank needed to carry out, but the checks needed to be proportionate, taking into account things like the type, amount, duration and total cost of the credit, as well as Mr M's individual circumstances.

And it isn't sufficient for Zopa Bank to just complete proportionate checks – it must also consider the information it obtained from these checks when going on to arrange the lending. This includes not lending to someone in financial hardship; and ensuring repayments can be made sustainably without the need to borrow further.

Loan one

All parties appear to agree that loan one was fairly arranged. This has been Zopa Bank's position throughout this complaint; and Mr M accepted our investigator's opinion setting out why she considered loan one was fairly brought about.

I won't set out in detail my review here except to say I'm in agreement that the checks were proportionate which demonstrated this loan was affordable to Mr M; and I therefore consider Zopa Bank went on to make a fair lending decision when arranging loan one.

Loan two

Zopa Bank says it completed the same level of checks when arranging loan two as loan one; and that these checks were proportionate and that it made a fair lending decision. Having carefully considered its argument, I'm not persuaded its checks were proportionate in this instance; or that it went on to make a fair lending decision when arranging loan two.

I say this because as our investigator has explained, Mr M had returned to Zopa Bank within nine months for further borrowing, with the same declared loan purpose to purchase a car.

Mr M's declared income at this point had increased to around £37,000, which Zopa Bank verified to be accurate through an online verification tool. While I don't doubt this to have been inaccurate, it was a significant increase within such a short space of time – around 45% of the income Zopa Bank had verified nine months previously.

The credit check Zopa Bank completed also showed Mr M had opened another line of credit within the nine months, and that he was now utilising the overdraft facility on his current account. While all of his existing lines of credit were being maintained well, Mr M's total indebtedness now stood at around £5,870 (which included just over £2,000 left to repay towards loan one). So, this was still an increase from the previous nine months, and I consider this suggests Mr M was beginning to become more reliant on credit.

Taking this into account, together with the significant increase in Mr M's income, and that Mr M was returning for further credit within such a short space of time for the same purpose, I consider these factors when reviewed together ought reasonably to have raised concerns for Zopa Bank. I consider at this point it ought to have looked to obtain a full understanding of Mr M's financial situation. This would have included obtaining information about his regular non-discretionary spending, so it could be fully satisfied further borrowing would be sustainably affordable for Mr M.

As Zopa Bank's checks didn't go this far, I'm not persuaded its checks were proportionate based on the information it had obtained and knew about Mr M's financial situation.

Mr M has provided our service with bank statements covering the three months leading up to this loan. Zopa Bank could have looked to obtain information about Mr M's non-discretionary expenditure by any means; but in the absence of any other information, I consider Mr M's bank statements allow me to obtain an understanding of what proportionate checks would likely have shown Zopa Bank about his financial situation at the time of loan two.

Mr M's monthly income varies across the three months, which supports his testimony that he was self-employed and that his income did fluctuate on a month-by-month basis. Mr M's average pay across these months is just above £1,900, considerably lower than the figure of around £2,600 which Zopa Bank used in its creditworthiness assessment.

Mr M's expenditure towards rent appears to be around the £300 he declared to Zopa Bank. His average payments towards other non-discretionary spending total around £1,000 which includes transactions towards usual household bills, food and travel. Mr M's statements also show payments to what appear to be family and friends with references such as '*money borrowed*', '*borrowed money*' and '*borrowed*'. Mr M's account goes into an overdraft position in each of the months, however the income does bring the account back into credit.

Taking into account Mr M's average income and expenditure across these months, together with the regular payments to what appear to be friends and family as found above, it's clear Mr M is left in a negative position each month as his expenditure totals an average of around £2,100 against his income of around £1,900.

Had Zopa Bank completed reasonable and proportionate checks I consider it ought reasonably to have identified this lending wasn't affordable for Mr M. So, it therefore follows I consider Zopa Bank made an unfair lending decision when arranging loan two.

Putting things right

As Mr M's had the use of the funds as a result of this lending, I think it's fair that he repays the capital amount borrowed. But Mr M has paid interest on a loan that shouldn't have been brought about. So, I think Mr M has lost out and Zopa Bank Limited should put things right by taking the following action:

- Remove all interest, fees and charges applied to loan two from the outset. Any payments made by Mr M should then be deducted from the new starting balance.
 - a. If the payments Mr M has made total more than the amount he was originally lent, then any surplus should be treated as overpayments and refunded to him, together with 8% simple interest* calculated on any overpayments made, from the date they were paid by Mr M to the date the complaint is settled.
 - b. If after the adjustments have been made there is still a balance to pay Zopa Bank Limited should discuss arranging a suitable/affordable payment arrangement with Mr M for the remaining balance.
- Remove any adverse information recorded on Mr M's credit file as a result of loan two once any outstanding balance has been repaid.

*HM Revenue & Customs requires Zopa Bank Limited to deduct tax from this interest. Zopa Bank Limited should give Mr M a certificate showing how much tax it's deducted, if he asks for one.

Mr M has made us aware that he has experienced problems trying to set up an agreeable payment arrangement with Zopa Bank Limited. I would remind Zopa Bank Limited of its obligation to treat Mr M fairly and sympathetically when communicating with him and looking to arrange repayment of any outstanding balance.

My final decision

I'm upholding Mr M's complaint about Zopa Bank Limited and direct it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 11 August 2023.

Richard Turner
Ombudsman