Complaint

Mrs A has complained that Zopa Limited ("Zopa") unfairly brought about an unaffordable loan for her.

Background

Zopa operated the electronic system in relation to lending which led to Mrs A being provided with a loan in September 2018. The loan was for £4,000.00 and had an APR of 24%. This meant that the total amount to be repaid, which included interest, fees and other charges totalling £1,477.52, was due to be repaid in 36 monthly instalments of £152.15.

Mrs A's complaint was reviewed by one of our adjudicators. He thought that Zopa ought to have seen that Mrs A wasn't in a position to repay this loan at the time it arranged it. So he upheld Mrs A's complaint. Zopa disagreed with our adjudicator'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 Mrs A'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 Mrs A's complaint. These two questions are:

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- Did Zopa complete reasonable and proportionate checks to satisfy itself that Mrs A would be able to meet her 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 Mrs A would've been able to do so?
- Did Zopa act unfairly or unreasonably in some other way?

Did Zopa complete reasonable and proportionate checks to satisfy itself that Mrs A would be able to meet her 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 Mrs A required it to carry out a proportionate assessment of whether she 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 Mrs A*. In practice this meant Zopa had to ensure making the payments to the loan wouldn't cause Mrs A undue difficulty or adverse consequences. It wasn't enough for Zopa to simply think about the likelihood of Mrs A making payments, it also had to consider the impact of this on Mrs A.

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.

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 Mrs A before arranging this loan. It also carried out a credit check to work out what Mrs A's existing credit commitments were too. However, I'm mindful that any credit check carried out is likely to have shown that Mrs A already had a reasonable amount of existing debt and that she was close to her limits on her revolving credit accounts.

Given the information obtained is likely to have shown the extent of Mrs A's existing indebtedness, Zopa's own checks suggest that Mrs A had a debt to income ratio of approaching 45%, I would have expected Zopa to have taken further steps to verify Mrs A's expenditure to ensure she had the necessary funds to repay the loan it was arranging. After all Mrs A's indebtedness and sudden need to utilise most of her existing lines of credit, didn't tally with someone who had the level of disposable income Zopa's checks appeared to suggest.

In reaching this conclusion, I've kept in mind that this was the first and only loan Zopa arranged for Mrs A. But bearing in mind 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 Mrs A'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 Mrs A 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 Mrs A would've been unable to sustainably repay this loan.

Mrs A has now provided us with evidence of her financial circumstances at the time she applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mrs A 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 Mrs A'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 Mrs A could sustainably make her loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

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 Mrs A was struggling to manage her finances. It doesn't take too much probing to see that the reason for Mrs A's difficulties and indebtedness was because she was gambling unsustainable sums of money. And her ability to repay this loan would in large part be dependent on her success as a gambler, which isn't a reasonable basis for concluding that Mrs A 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 Mrs A 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 Mrs A would not be able to sustainably make the repayments to this loan.

Did Zopa act unfairly or unreasonably towards Mrs A 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 Mrs A in some other way.

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

Did Mrs A lose out as a result of Zopa unfairly and unreasonably bringing about her loan?

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

Fair compensation – what Zopa needs to do to put things right for Mrs A

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

- refunding all the interest, fees and charges Mrs A paid on her loan;
- adding interest at 8% per year simple on any refunded payments from the date they were made by Mrs A to the date the complaint is settled†;
- removing any adverse information recorded on Mrs A's credit file as a result of this loan.

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

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs A to accept or reject my decision before 6 February 2023.

Jeshen Narayanan
Ombudsman