

## **Complaint**

Mr S has complained that Zopa Bank Limited (“Zopa”) unfairly provided him with unaffordable loans.

## **Background**

Zopa provided Mr S with a first loan in July 2020. The loan was for £2,000.00 and was initially due to be repaid in 12 months. Mr S settled this loan early before he ended up applying for a second loan for £7,500.00, which Zopa provided in November 2020. Loan two had a repayment term of 36 months.

Zopa provided a third loan for £8,500.00 in May 2021. Loan 3 had a repayment term of 36 months. Finally, Zopa provided Mr S with a fourth loan in December 2021, which was for £2,000 and had a 60-month term.

Mr S’ complaint was reviewed by one of our investigators. She thought that proportionate checks would have shown Zopa that it shouldn’t have provided any of these loans. So she upheld Mr S’ complaint.

Zopa accepted that it shouldn’t have provided loan 4 to Mr S. But it disagreed with our investigator’s findings on loan 1 to 3 and as a result the complaint was passed to an ombudsman for review.

As the parties are in agreement that loan 4 shouldn’t have been provided to Mr S, this decision is only looking at whether Zopa acted fairly and reasonably when providing loans 1 to 3 to Mr S.

## **My provisional decision of 3 February 2023**

I issued a provisional decision – on 3 February 2023 - setting out why I intended to partially uphold Mr S’ complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started out by saying that 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 that I had used this approach to help me decide Mr S’ complaint.

Having carefully thought about everything, I thought that there were three overarching questions that I needed to answer in order to fairly and reasonably decide Mr S’ complaint. These three overarching questions were:

- Did Zopa complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay his loans in a sustainable way?
  - If so, did it make a fair decision?
  - If not, would those checks have shown that Mr S would’ve been able to do so?

- Bearing in mind the circumstances, at the time of each application, was there a point where Zopa ought reasonably to have realised Mr S' indebtedness was being increased in a way that was unsustainable or otherwise harmful and so it shouldn't have provided further loans?
- Did Zopa act unfairly or unreasonably in some other way?

I started out by considering the first of these questions.

*Did Zopa complete reasonable and proportionate checks to satisfy itself that Mr S would be able to repay his loans in a sustainable way?*

I explained that the rules, regulations and good industry practice in place when Zopa lent to Mr S required it to carry out a reasonable and proportionate assessment of whether he could afford to repay his loans 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 loans sustainably would cause difficulties or adverse consequences for Mr S. In practice this meant that Zopa had to ensure that making the payments to the loan wouldn't cause Mr S undue difficulty or adverse consequences. In other words, it wasn't enough for Zopa to simply think about the likelihood of Mr S making payments, it had to consider the impact of loan repayments on Mr S.

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 thought 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).

Finally I then explained that there could 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 then thought about all of the relevant factors in Mr S' case.

*Were Zopa's checks reasonable and proportionate?*

Zopa said that it completed an income and expenditure assessment with Mr S before providing all of these loans. It said that it considered it did enough to establish that all of these loans were affordable. I went on to consider what it did for each loan and the position at the respective times, individually.

- Loan 1

Loan 1 was for £2,000.00, had an APR of 33.5% and was due to be repaid in 12 monthly repayments of around £195.

From what I could see Mr S was asked about details of annual income which he confirmed as £28,000.00 and what he paid towards his rent or mortgage. It looked like Zopa also carried out a credit check which shows that he had a loan with a small outstanding balance and a credit card and overdraft which weren't being used.

So I thought that it was fair to say that the credit search carried out on Mr S showed that his existing credit commitments were well managed. It was also my understanding that the purpose of this loan was recorded as car purchase. I noted that our investigator stated that Zopa ought to have carried out further checks simply because the amount advanced wasn't that much more than the monthly disposable income arrived at and it wasn't sensible to take out a loan for this amount and purpose in these circumstances. But I wasn't persuaded by this argument given this was a first loan that Mr S was taking with Zopa.

I accepted that Zopa may not have asked Mr S for further information about his other household bills and expenditure. However, given what was left over from his monthly income once his mortgage payments and payments to existing credit commitments were deducted, I was satisfied that a detailed breakdown of Mr S' non-credit related expenditure wasn't necessary here.

Bearing in mind Zopa obtained a reasonable amount of information on Mr S' circumstances and there wasn't anything inconsistent in what was gathered, I was satisfied that it did carry out reasonable and proportionate checks before providing loan 1 to Mr S. And given that these checks showed Mr S had sufficient disposable income to make the required payments, I was also satisfied that Zopa acted fairly and reasonably when providing loan 1 to Mr S.

- Loan 2

Loan 2 was for £7,500.00, had an APR of 23.9% and was due to be repaid in 36 monthly repayments of just under £285. It's also important to note that Mr S had already fully settled the outstanding balance on loan 1 before he applied for loan 2.

From what I could see Zopa carried out similar checks to what it had done for loan 1. Mr S once again confirmed he had an annual salary of £28,000.00 and this time he confirmed that he was a homeowner with mortgage payments of £280 a month. Zopa's credit check also showed that Mr S had a credit card, with a small outstanding balance and a catalogue shopping account which wasn't being used.

So I thought that the credit search carried out on Mr S showed that his existing credit commitments were still being well-managed and his overall indebtedness was still very low. However, I did think that there was a warning sign – Mr S returning for a second loan so quickly – which Zopa ought to have noted. Nonetheless, given loan 1 was settled in full prior to loan 2 being taken, I would only have expected Zopa to have kept the warning sign I highlighted in mind should Mr S have returned for further lending, rather than declined Mr S' loan application for this reason.

Once again, it appeared as though Zopa didn't ask Mr S for further information about his other household bills and expenditure. However, given what was left over from his monthly income once his mortgage payments and payments to existing credit commitments were deducted, I remained satisfied that a detailed breakdown of Mr S' non-credit related expenditure wasn't necessary – especially as the monthly payments weren't that much more than for loan 1- albeit he had to maintain payments for a longer period of time.

So bearing in mind Zopa obtained a reasonable amount of information on Mr S' circumstances and while there was a matter to note and monitor going forwards, I was satisfied that it did carry out reasonable and proportionate checks before providing loan 2 to Mr S. And given that these checks showed Mr S had sufficient disposable income to make the required payments, I was satisfied that Zopa acted fairly and reasonably when providing loan 2 to Mr S.

- Loan 3

Loan 3 was for £8,500.00, had an APR of 9.7% and was due to be repaid in 36 monthly repayments of just over £270. I had seen that Zopa had referred to a lump sum payment being made on loan 2, which had the effect of reducing the outstanding balance and lowering the monthly repayments going forwards.

However, from what I could see this lump-sum payment wasn't made until after Mr S had been provided with loan 3. And there was nothing in the documentation provided which suggested that some of the proceeds of loan 3 were going to be used to reduce the outstanding amount on loan 2 in this way. So I was satisfied that Zopa needed to be mindful that, at the time at least, there was the expectation that Mr S would make the full initial monthly payment to loan 2 as well as the monthly payment loan 3 going forward.

Loan 3 was also only taken out only a few months after loan 2. And Zopa still only carried out similar checks to what it had done for loans 1 and 2. Mr S once again confirmed he had an annual salary of £28,000.00 and that he was a homeowner with mortgage payments of £280 a month. Zopa's credit check also showed that Mr S was close to his limit on his credit card and also now had an outstanding balance on his catalogue shopping account too.

While I was satisfied that Mr S quickly returning for loan 2 was a warning sign to have been monitored going forward, I thought that Mr S returning for loan 3 so quickly after loan 2 was now a cause for concern. And in these circumstances, I was satisfied that it was no longer fair and reasonable for Zopa to assume Mr S had enough left over to meet his non-credit related living costs.

It was my view that Mr S' increasing indebtedness and apparent need for a third loan in such quick succession ought to have prompted Zopa to have asked further questions about his living costs and regular non-credit related expenditure. Given the circumstances, I thought that Zopa needed to get a better understanding of why Mr S wanted or needed this much in funds so quickly and when his debts elsewhere were mounting up.

As there was no evidence that Zopa did find out more about Mr S' circumstances, or that it asked Mr S to provide anything more than he had done for loans 1 and 2 despite him now applying for funds for a third time in just over a year, I was minded to conclude that it didn't complete fair, reasonable and proportionate affordability checks before providing loan 3 to Mr S.

*Would reasonable and proportionate checks have indicated to Zopa that Mr S would have been unable to repay loan 3?*

As reasonable and proportionate checks weren't carried out before loan 3 was provided, I couldn't say for sure what they would've shown. So I needed to decide whether it was more likely than not that proportionate checks would have told Zopa that Mr S would've been unable to sustainably repay this loan.

Mr S had provided us with evidence of his financial circumstances at the time he applied for loan 3. I accepted that different checks might show different things. And just because something showed up in the information Mr S had provided, it didn'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 thought it was perfectly fair, reasonable and proportionate to place considerable weight on what this information said as an indication of what Mr S' financial circumstances were more likely than not to have been at the time.

I thought that it was also important to note that Zopa was required to establish whether Mr S could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. I said this as Zopa had said that the loan was affordable because Mr S did make his payments and he managed to repay his loan early.

I explained that 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 didn't automatically follow that this was the case. And as a borrower shouldn't have to borrow further in order to make their payments, it followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower wouldn't be able to sustainably make their repayments in circumstances where it was on notice that they were unlikely to be able to make their repayments without borrowing further.

Having considered the information available in light of all of this, it was clear that Mr S was struggling to manage his finances. It didn't take too much probing and digging to see that the reason for Mr S' further loans and increasing indebtedness was because he was gambling unsustainable sums of money. And his ability to repay loan 3 would in large part be dependent on his success as a gambler, which I didn't think was a reasonable basis for concluding that Mr S could repay his loan without borrowing further or experiencing significant adverse consequences.

Bearing all of this in mind, I was satisfied that reasonable and proportionate checks would more likely than not have demonstrated that Mr S was unlikely to have been able to make the repayments to loan 3 (as well as loan 4 as Zopa had already agreed) without borrowing further and/or suffering undue difficulty. And, in these circumstances, I concluded that reasonable and proportionate checks would more likely than not have alerted Zopa to the fact that Mr S would not be able to sustainably make the repayments to loan 3.

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

I didn't see anything during the course of considering Mr S' complaint that led me to conclude Zopa acted unfairly or unreasonably towards Mr S in some other way.

So it was not my intention to find that Zopa didn't act unfairly or unreasonably towards Mr S in some other way.

## **Conclusions**

Overall and having carefully thought about the three overarching questions, set out earlier in my provisional decision, I was left intending to issue a final decision which found that Zopa:

- *did* complete reasonable and proportionate checks on Mr S to satisfy itself that he was able to repay loans 1 and 2 and that it made fair and reasonable decisions to provide these loans;
- *didn't* complete reasonable and proportionate checks on Mr S to satisfy itself that he was able to repay loans 3 and that such checks would have shown he was unlikely to be able to repay this loan without suffering adverse consequences or borrowing further;
- *didn't* also act unfairly or unreasonably towards Mr S in some other way.

The above findings left me intending to conclude that Zopa unfairly and unreasonably provided loan 3 to Mr S in May 2021 (as well as loan 4 which Zopa has already agreed it shouldn't have provided) and that it needed put things right.

I then set out a method of putting things right for Mr S which I thought addressed Zopa's shortcomings and Mr S' resulting loss.

## **Responses to my provisional decision**

Zopa confirmed that it accepted my provisional decision and that it didn't have anything further to add.

Mr S didn't accept my provisional decision. He thought that Zopa shouldn't have provided him with loan 2 (as well as loans 3 and 4) because during the 27-day period between loan 1 being repaid and loan 2 being provided he took out two other loans with other providers. Mr S believed that these loans would have been picked up fairly easily if Zopa did a little more digging.

## **My findings**

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

I thank the parties for their responses to my provisional decision.

I've considered Mr S' further points.

Mr S says that the 27-day period between loan 1 being repaid and loan 2 being provided necessitated further checks as he supposedly had little in the way of existing debt yet needed £7,500.00 for debt consolidation purposes. In my provisional decision, I explained that Mr S returning for a second loan so quickly was a warning sign. And that this was something that Zopa ought to have noted – certainly should Mr S return for further loans.

However, I didn't think that this in itself meant that Zopa shouldn't have lent, as its credit check showed that Mr S had a credit card, with a small outstanding balance and a catalogue shopping account which wasn't being used. This information showed that Mr S' existing credit commitments were still being well-managed. And as they didn't show on the credit searches carried out, I don't think that Zopa can be expected to have known about Mr S' other loans. Equally, I don't think that it was unreasonable to believe that at least some of the proceeds of loan 2 could be used for consolidation purposes as the interest rate on loan 2 is likely to have been lower than that on Mr S' revolving credit accounts.

Mr S says that it wouldn't have taken too much digging into his circumstances to have found out about his other loans. I'm not necessarily persuaded this is the case, given they didn't show on the credit file and Mr S is unlikely to have made any scheduled repayments to those loans in the 27 days between loan 1 being repaid and loan 2 being taken. But, in any event, I think that the rest of the information Zopa already had was plausible and consistent and didn't necessitate further checks into Mr S' circumstances.

I also think that it's worth noting that Mr S was the only party in full knowledge of his true financial position. And he chose not to declare the other loans or other payments he was making. I don't think that it would be fair and reasonable for me to ignore Mr S' role in this matter, in circumstances where Zopa carried out reasonable and proportionate checks and was entitled to rely on what it had gathered.

Overall and having considered Mr S' further points, I've not been persuaded to alter my conclusions on loan 2 and I remain satisfied that Zopa acted fairly and reasonably when providing this loan to Mr S.

As this is the case, I also remain satisfied that Zopa unfairly and unreasonably provided loan 3 to Mr S in May 2021 (as well as loan 4 which Zopa has already agreed it shouldn't have provided). So I'm still partially upholding Mr S' complaint and Zopa now needs put things right.

### **Fair compensation – what Zopa needs to do to put things right for Mr S**

Having considered everything, I think that Zopa should put things right for Mr S in the following way:

- removing all interest, fees and charges applied to loans 3 and 4 from the outset. The payments made should be deducted from the new starting balances – the £8,500.00 and £2,000.00 originally lent. Zopa should treat any payments made should the new starting balances be cleared as overpayments. And any overpayments should be refunded to Mr S.
- if no outstanding balance remains on loan 3 and/or loan 4 after all adjustments have been made any adverse information recorded on Mr S' credit file as a result of the respective loan should be removed.

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

If after all of the above adjustments have been made an outstanding balance remains on either or both of Mr S' loans, Zopa should set up an affordable payment plan for Mr S. I'd also remind Zopa of its obligation to exercise forbearance and due consideration if it intends to collect on any outstanding balances, should any remain after all adjustments have been made to the accounts, and it's the case that Mr S is experiencing financial difficulty.

**My final decision**

For the reasons I've explained and in my provisional decision of 3 February 2023, I'm partially upholding Mr S' complaint. Zopa Bank Limited should put things right for Mr S in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 22 March 2023.

Jeshen Narayanan  
**Ombudsman**