

The complaint

Mr W complains that Zopa Bank Limited was irresponsible to lend to him.

What happened

Mr W took out a £2,000 loan with Zopa on 26 December 2021. He needed to repay £56.94 per month for 60 months.

Mr W says that if Zopa had carried out better checks it would have found that he couldn't repay the loan without borrowing further. He says he already had large financial commitments and was repaying credit with further credit.

Zopa says Mr W had no adverse information on his credit file at the time of the application and his debt-to-income ratio and disposable income were within acceptable limits. It adds that it verified Mr W's income and additional checks were not required before the loan was approved.

Our investigator recommended the complaint should be upheld. She said there were indications that Mr W was already struggling financially when he applied for the loan and that Zopa's checks should have gone further. Our investigator said she found that the repayments were unsustainable, and that Mr W should only have to repay the money he had borrowed.

Zopa responded to say, in summary, that Mr W's overdraft in itself was not evidence that the lending was unsustainable as it takes a holistic approach to lending decisions. It added that Mr W had a good credit record, the affordability was fine and so was the debt-to-income ratio.

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.

I need to take into account the relevant rules, guidance and good industry practice.

The Financial Conduct Authority (FCA) was the regulator when Zopa lent to Mr W. Its rules and guidance obliged it to lend responsibly. As set out in the regulator's Consumer Credit Sourcebook (CONC), this meant that Zopa needed to take reasonable and proportionate steps to assess whether or not a borrower could afford to meet their loan repayments in a sustainable manner over the lifetime of the agreement.

CONC 5.2A.4R states that:

A firm must undertake a reasonable assessment of the creditworthiness of a customer before:

- 1. entering into a regulated credit agreement; or*
- 2. significantly increasing the amount of credit provided under a regulated credit agreement; or*
- 3. significantly increasing a credit limit for running-account credit under a regulated credit agreement.*

Repaying debt in a sustainable manner was defined as being able to meet repayments out of normal income without the customer having to borrow to meet the repayments, without failing to make any other payment the customer has a contractual or statutory obligation to make and without the repayments having a significant adverse impact on the customer's financial situation (CONC 5.2A.12R).

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the *lower* a person'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 borrower is required to make payments for an extended period).

In addition, as per CONC 5.2A.16G (3): *For the purpose of considering the customer's income, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer).*

And CONC 5.2A.17R (2) says: *The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current non-discretionary expenditure.*

Bearing all of this in mind, in coming to a decision on Mr W's case, I have considered the following questions:

- Did Zopa complete reasonable and proportionate checks when assessing Mr W's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?
 - If not, what would reasonable and proportionate checks have shown?
- Did Zopa make a fair lending decision?
- Did Zopa act unfairly or unreasonably in some other way?

With regard to the first question, Zopa has said that it verified Mr W's income, and I've seen the results of its credit check. I acknowledge that Mr W also declared his rental was £200, but I don't consider those checks went far enough. I say that because:

- The loan was for 60 months, and Zopa needed to ensure the repayments were sustainable over that period;
- Although I acknowledge Zopa's credit check showed no adverse information:
 - Mr W had two loans and a credit card, all of which had been taken out in the previous 8 months with a combined balance of almost £13,000;
 - Mr W was at the limit of his £2,000 overdraft facility;
 - Mr W was already committing over 26% of his declared income to credit repayments;
- I can't see that Zopa had taken reasonable steps to determine Mr W's non-discretionary expenditure.

As Mr W had taken out all his credit so recently, and he was already committed to relatively high repayments, I find Zopa should have ensured it fully understood his financial situation before approving further lending, which Mr W said was for a car. So I consider proportionate checks should have included verification of Mr W's income and regular expenditure.

I've had a look at Mr W's bank statements from the time as a reasonable proxy for what proportionate checks may have shown.

- Mr W's income actually averaged under £1,000 per month in the three months leading to the loan;
- He spent around £180 on his mobile phone and had monthly direct debits of £55;
- Fuel and insurance were about £75 per month and Mr W spent at least £100 on food;
- Overdraft charges were around £50 per month, although I note Zopa had estimated them to be twice that;
- Other credit commitments were approximately £300 per month.

With rental of £200 per month, I'm satisfied that a further loan was unaffordable to Mr W and that credit commitments of over 40% of his income going forwards was not sustainable.

I can also see significant gambling expenditure on some of Mr W's bank statements, but Zopa may not have used the statements to obtain the information it needed for a proportionate check so I cannot assume it would have been aware of this. I do note, however, that Mr W only sustained contractual repayments on the Zopa loan for three months before he started making much reduced payments.

In summary, I don't consider Zopa's checks went far enough, and I'm satisfied that reasonable and proportionate checks would have shown that Mr W could not sustainably make the loan repayments for five years without borrowing again.

Therefore, I find it was irresponsible to lend to Mr W and Zopa did not make a fair lending decision, although I don't find it acted unfairly or unreasonably in any other way.

My final decision

My decision is that I uphold this complaint. Zopa Bank Limited should:

- Add up the total amount of money Mr W received as a result of having been given the loan. The repayments Mr W made should be deducted from this amount.
 - If this results in Mr W having paid more than he received, then any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). *
 - If any capital balance remains outstanding, then Zopa should attempt to arrange an affordable and suitable payment plan with Mr W;
- Remove any negative information recorded on Mr W's credit file regarding the loan, once it has been repaid.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 18 April 2023.

Amanda Williams
Ombudsman