

The complaint

Mr S complains Zopa Bank Limited lent to him irresponsibly. Mr S is represented by his wife, Mrs S, in bringing this complaint.

What happened

Mr S' wife fell victim to an investment scam in early 2022. As part of the scam, Mrs S was led to believe she needed to pay fees and charges to withdraw funds from her investment. She didn't have the funds to meet these costs and so, over a space of three weeks, Mr S and his wife applied to borrow £156,450 over 11 loans with several different lenders.

In April 2022 Mr S applied to Zopa for, and was given a loan for £20,700, which was repayable over a period of 60 months. The repayments were around £408 a month, and in total Mr S agreed to pay back about £24,467 over the five years, after interest was added.

Mr S explains he and his wife were groomed and coached by the scammers on how to apply for the loans. Mr S thinks Zopa should have checked his circumstances more thoroughly before agreeing to lend because with better checks, Zopa ought to have seen he could not afford this loan.

Zopa says it completed appropriate checks before it approved lending to Mr S and these showed the borrowing was affordable. It also ran checks to verify Mr S' details including his name, date of birth, address and bank details and these didn't lead it to believe the loan application wasn't made by Mr S.

Unhappy with the response Mr S got from Zopa, he brought his complaint to this service. Our Investigator upheld the complaint. He concluded that with reasonable and proportionate checks, Zopa would have considered Mr S unable to sustainably afford this loan. He recommended that Zopa should remove all interest and charges from the loan and arrange an affordable repayment plan for the balance going forward. He also recommended Zopa removes any negative information about the loan from Mr S' credit file.

Zopa accepted the Investigator's findings and recommendation to put matters right.

Mr S disagreed with the investigator and he thinks Zopa should forgo collecting on the loan altogether.

Because an agreement couldn't be reached, the case has been passed to me to decide.

Mr S' loan with Zopa is his second but also the eighth in the chain of Mr and Mrs S' loan applications and this decision is looking only at this one loan agreement. I am aware Mr S (and his wife) have referred other cases concerning some of the other loan applications and these have been/shall be looked at under separate case references.

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.

We've set out our approach to complaints about unaffordable and irresponsible lending on our website. I've taken this into account in deciding Mr S' complaint. I'm sorry to hear of the devastating impact this matter has had, and is having on, Mr S and his family. I don't wish to cause them any further distress – but I must give my decision based on what I consider to be fair and reasonable, taking account of all evidence in the circumstances relating to this individual case. I've considered Mr S' submissions carefully, but I'm not persuaded to reach a different outcome from the Investigator. I'll explain my reasons.

Zopa needed to take reasonable steps to ensure that it didn't lend to Mr S irresponsibly. It should have completed reasonable and proportionate checks to satisfy itself that Mr S would be able to pay the loan in a sustainable way. There is no set list of what reasonable and proportionate checks should look like, rather greater thoroughness might be reasonably expected where a person on a lower level of income may be borrowing a high sum, or taking out borrowing over a longer period which could potentially cost more in the longer term.

Zopa did complete some checks to see if the loan was affordable. Zopa has said Mr S would not have been offered the loan if he had not passed its checking criteria. It explained that part of its checks involved reviewing the applicant's credit profile to assess their income and expenditure, and it also used information from Mr S' active credit file.

Mr S was borrowing a large amount over a reasonably long term, but Mr S was also in permanent employment on a good salary, which he had declared at £45,000 a year when applying for the loan. Zopa used an automated check of his current account turnover to validate the income declared and calculated his average take home pay at £2,851. I have some concerns about Zopa only relying on a credit reference agency data tool to analyse Mr S' current account turnover data and validate the income he had declared. I say this because Mr S' current account was held jointly with his wife and both of their salaries were mandated to the one account. I've not seen the actual data returned but I would be surprised if it failed to caution that a joint account holding had been a factor in the level of confidence provided by the check.

I have reviewed Mr S' current account statements and seen that his average take home pay between January and March 2022 had been around £2,680 a month – £171 less than the amount Zopa used in its affordability check. I also agree with the Investigator that, given the information it had to hand, its checks could have gone further still. For example, by taking account of Mr S' non-discretionary living expenses and including the repayments he made to a secure loan, which had been overlooked by Zopa's affordability assessment.

Zopa's submissions note that at the time, Mr S had no adverse credit showing on his credit file and that he was managing payments to his creditors. Mr S has shared more details about his household's monthly non-discretionary spending, which totalled around £1,500 – it was made up of:

Food and household shopping	£300.00
Council tax	£222.00
Utilities	£182.00
Insurances	£216.00
Phone/TV/Internet	£175.00
Travel (including petrol)	£190.00
Childcare	£200.00
Healthcare	£11.00

I have taken a cursory look at Mr S' bank statements and it gives me sufficient confidence in the figures he has provided. Noting his bank account was joint with Mrs S, I think it's fair to say these were split equally between Mr and Mrs S. So, taking account of his share of the non-discretionary spending, his share of the joint mortgage and secured loan and his other credit commitments, his existing average outgoings came to £2,340 a month. This left Mr S with £340 a month before the new (£408) loan repayment.

So, with reasonable and proportionate checks, Zopa should have seen the loan Mr S had applied for was simply unaffordable. Even if I were to accept Mr S' overstated income is within an acceptable margin, it still would leave him with only £102 free income a month. Considering his wider circumstances – for example, running a car and having two dependants – and the likelihood of unplanned expenses, I'm not convinced that buffer is sufficient to conclude Mr S could repay the loan sustainably. I would still uphold his complaint all the same.

Finally, I've considered whether Zopa ought to have identified Mr S' application was in connection to the investment scam he had fallen victim to. But the evidence from the time does not support the application being less than genuine – for example, the funds were released to a bank account which Zopa had confirmed as belonging to Mr S. Zopa understood the purpose Mr S intended to put the loan monies towards was paying for home improvements, so I can't fairly say Zopa could have prevented Mr S' investment in the scam – afterall, he and his wife had already secured funds from Zopa and other lenders and continued to approach more lenders for further funds to invest.

Putting things right

When I find that a business has done something wrong, I'd normally direct that business – as far as it's reasonably practicable – to put the complainant in the position they *would be in now* if the mistakes it made hadn't happened.

In this case, that would mean putting Mr S in the position he would now be in if he hadn't been given the loan in question.

However, this isn't straightforward when the complaint is about unaffordable lending. Mr S was given the loan and he used the money. In these circumstances, I can't undo what's already been done. So, it isn't possible to put Mr S back in the position he would be in if he hadn't been given the loan in the first place.

I note Mr S wants Zopa to forgo collecting on the loan altogether. But given I don't find that Zopa ought to have taken more action to prevent Mr S from investing in the scam, I don't think that is a fair way of putting things right. Mr S says he did not benefit from loan because the funds were lost to an investment scam. As I explained in the above, it was not foreseeable to Zopa how Mr S intended to use the loan funds. Mr S did have the benefit of the loan funds insofar as they were paid to his bank account, albeit he then transferred and lost the money to the scam. Mr and Mrs S have approached their banks to seek the return of those transferred funds and their responses are under separate consideration by this service. In the circumstances, I cannot reasonably hold Zopa responsible for all or part of Mr S' loss to the scam or tell it to write-off the loan.

I must consider another way of putting things right fairly and reasonably given the circumstances of this complaint. Having done so, I think Zopa Limited should:

- a) Remove all interest, fees and charges applied to the loan from the outset. The payments Mr S made should then be deducted from the new starting balance. If the payments Mr S

has made total more than the amount he was originally lent, then any surplus should be treated as overpayments and refunded to him.

- b) Add 8% simple interest* calculated on any overpayments made, from the date they were paid by Mr S to the date the complaint is settled.
- c) Agree with Mr S an affordable plan to repay any amount left owing.
- d) Remove any adverse information recorded on Mr S' credit file as a result of this loan (once Mr S has repaid any outstanding balance).

*HM Revenue & Customs may require Zopa to deduct tax from this interest. Zopa should give Mr S a certificate showing how much tax it's deducted

I would only remind Zopa about its obligations to treat Mr S fairly and offer due forbearance should he now find himself in financial hardship. And equally, Mr S may also wish to seek independent debt advice.

My final decision

For the reasons I've explained, I uphold Mr S' complaint and I direct Zopa Bank Limited to put things right for him 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 30 June 2023.

Stefan Riedel
Ombudsman