

The complaint

Mrs S complains Zopa Bank Limited lent to her irresponsibly.

What happened

Mrs S 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, Mrs S and her husband applied to borrow £156,450 over 11 loans with several different lenders.

In April 2022 Mrs S applied to Zopa for, and was given a loan for £6,500, which was repayable over a period of 60 months. Mrs S told Zopa that the purpose of the loan was debt consolidation. The repayments were around £146 a month, and in total Mrs S agreed to pay back about £8,751 over the five years, once interest was added.

Mrs S says she was groomed and coached by the scammers on how to apply for the loans. Mrs S thinks Zopa should have checked her circumstances more thoroughly before agreeing to lend because with better checks, Zopa ought to have seen she could not afford this loan.

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

Unhappy with the response Mrs S got from Zopa, she brought her complaint to this service. Our investigator considered the complaint. He concluded that with reasonable and proportionate checks, Zopa would have considered Mrs S able to sustainably afford this loan.

Mrs S disagreed with the investigator and because an agreement couldn't be reached, the case has been passed to me to decide.

Mrs S' loan with Zopa is her first in the chain of loan applications and this decision is looking only at this one loan agreement. I am aware Mrs S (and her husband) have referred other cases concerning some of the other loan applications and these shall be looked at under separate case references.

In my provisional decision I explained that:

'We've set out our approach to complaints about unaffordable and irresponsible lending on our website. I've taken this into account in deciding Mrs S' complaint.'

Having done all of that, I have reached the same conclusions as those reached by our investigator for broadly the same reasons.

Zopa needed to take reasonable steps to ensure that it didn't lend to Mrs S irresponsibly. It should have completed reasonable and proportionate checks to satisfy itself that Mrs 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 Mrs S would not have been offered the loan if she 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 Mrs S' active credit file.

Mrs S was borrowing a sizeable amount over a significant term, but Mrs S was also in permanent employment on a good salary, which she had declared at £52,000 a year when applying for the loan. Zopa used an automated check of her current account turnover to validate the income declared and calculated her average take home pay at £3,225. I have some concerns about Zopa only relying on a credit reference agency data tool to analyse Mrs S' current account turnover data and validate the income she had declared. I say this because Mrs S' current account was held jointly with her husband 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 Mrs S' current account statements and seen that her average take home pay between January and March 2022 had been around £2,885 a month – £340 less than the amount Zopa used in its affordability check. But for reasons I'll continue to explain, I'm not convinced that, in this case, the overstated income meant Zopa shouldn't have lent.

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 Mrs S' non-discretionary living expenses and including the repayments she made to a secure loan, which had been overlooked by Zopa's affordability assessment.

Zopa's submissions note that at the time, Mrs S had no adverse credit showing on her credit file and that she was managing payments to her creditors. The investigator also looked into national averages for living expenses and the figure he arrived at led him to conclude Mrs S would have around £500 at her disposal (not accounting for the £340 discrepancy between her actual take home pay and the figure used in Zopa's assessment). During the time since the investigator issued his findings, Mrs S has shared more details about her 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 Mrs S' bank statements and it gives me sufficient confidence in the figures she has provided. Noting her bank account was joint with Mr S, I think it's fair to say these were split equally between Mrs and Mr S. So, taking account of her share of the non-discretionary spending, her share of the joint mortgage and secured loan and her other

credit commitments, her existing average outgoings came to £2,582 a month. This left Mrs S with £302 a month before the new (£146) loan repayment.

I also note Mrs S told Zopa that the purpose of the loan was debt consolidation. I've not seen that Zopa looked into which debts Mrs S was intending to consolidate. And had Zopa questioned Mrs S about which debts she intended to repay, I doubt it would have got a reliable understanding, given debt consolidation was never the true purpose for the loan. But still, it would have been reasonable for Zopa to have assumed her existing debt repayments would reduce. For example, if it had assumed Mrs S would use the loan funds to reduce her credit card debt, mirroring the approach Zopa took to estimate this commitment would reduce her existing repayments by £325 a month. So, I think it would be reasonable to conclude Mrs S was able to sustainably afford the repayments for the proposed loan.

Finally, I've considered whether Zopa ought to have identified Mrs S' application was in connection to the investment scam she 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 Mrs S. And as Zopa was unaware of the purpose Mrs S intended to put the loan monies towards, I don't think it is reasonable to suggest Zopa needed to do more to prevent Mrs S' loss.

In summary, while I think Zopa could have done more at the time of the application to satisfy itself Mrs S was able to sustainably repay this loan, reviewing the information we have about Mrs S' circumstances shows if proportionate checks had been carried out, it would still have been reasonable to lend to her.

I am sorry to hear of the stresses and strain this episode has placed on Mrs S and her family. My findings are in no way meant to diminish her circumstances, but my role is to decide what I think is fair and reasonable in the circumstances to resolve this complaint and I'm unable to say Zopa was wrong to lend to Mrs S based on the submissions and evidence available to me. I would only remind Zopa about its obligations to treat Mrs S fairly and offer due forbearance should she now find herself in financial hardship.'

Responses

I asked the parties to the complaint to let me have any further representations that they wished me to consider by 8 March 2023.

Zopa acknowledged my provisional findings and it didn't have anything further to add.

Mrs S replied and in summary, she said:

- She did not benefit from loan because the funds were lost to an investment scam.
- Flaws with the reporting of information to the credit reference agencies allowed the scammers to take advantage of and manipulate Mrs S into taking out loans in quick succession.
- Zopa didn't question her about her financial commitments including a second charge mortgage.
- Mrs S and her husband can't afford to repay the loans they took out as part of the scam and they are concerned about the impact this may have on their future mortgage needs unless the loans are written off.
- Mrs S is disappointed in Zopa selling the debt to a third party without notice.

Mrs S also submitted a copy of a letter from trading standards addressed to this service's chief ombudsman and to the chief executive of the Financial Conduct Authority. The letter

echoes much of Mrs S' comments. It also speaks more widely about the delay in reporting of information between the credit reference agencies and lenders and how the absence of real-time information helped to facilitate the scam Mrs S fell victim of.

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'm sorry to hear of the devastating impact this matter has had, and is having on, Mrs S and her 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 into account all of the evidence in the circumstances relating to this individual case.

I've considered Mrs S' submissions carefully, but I'm not persuaded to reach a different outcome to my provisional decision. I'll explain why.

Both Mrs S and trading standards have commented on the delay in reporting of information between the credit reference agencies and lenders and how the absence of real-time information helped to facilitate the scam she fell victim of. But my decision is confined to considering the regulated activities Zopa is responsible for – and it is not responsible for how other businesses report information to credit reference agencies nor the activities of the credit reference agencies. So, regrettably, I cannot consider their comments as part of this decision, which can only deal with Mrs S' complaint of irresponsible lending by Zopa.

Mrs S pointed out that Zopa didn't question her about her financial commitments including a second charge mortgage (secure loan). But as I explained in my provisional decision, Zopa got such information from Mrs S' active credit file. I think it is reasonable to say, given the extent of the coaching Mrs S received from the scammers on what information to give to the lender, that the information showing on her credit file at the time was the more reliable account. I also pointed to Zopa failing to take account of Mrs S' secured loan. The contractual payment to the loan showing on her credit file was £584 and with it being joint with her husband, I think it's fair to say they contributed equally to the repayments. And for the reasons given in my provisional decision, I am satisfied Mrs S had sufficient disposable income to cover her half of the repayments and at the same time still sustainably repay the loan she was applying to Zopa for.

Mrs S says she did not benefit from loan because the funds were lost to an investment scam. As I explained in my provisional decision, it was not foreseeable to Zopa how Mrs S intended to use the loan funds – it was working on the premise Mrs S intended to consolidate her existing debts, as she had declared during her application. Mrs S did have the benefit of the loan funds insofar as they were paid to her bank account, albeit she then transferred and lost the money to the scam. I also cannot ignore that her bank has offered to refund her half of this money – a matter which is under separate consideration at this service. In the circumstances, I cannot reasonably hold Zopa responsible for all or part of her loss to the scam or tell it to write-off the loan.

I note Mrs S is disappointed at Zopa passing the debt to a third party whilst her case is still under our consideration. Mrs S had an agreement to make token payments whilst the case was ongoing and Zopa had already registered the account as in default. Given I also was not minded in my provisional decision to direct Zopa to write-off the loan, I don't think it fair to say Zopa has acted inappropriately. Mrs S hasn't said that the acquirer of the debt is unwilling to consider a payment arrangement. The obligations to treat Mrs S fairly and offer due forbearance should she now find herself in financial hardship also apply to them. And she is free to bring a complaint about the acquirer of the debt if she thinks its actions are

unfair.

My final decision

For the reasons I've explained, I don't uphold Mrs S' complaint or make an award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 17 April 2023.

Stefan Riedel
Ombudsman