DRN-4339724

## The complaint

Mr F complains he has been treated unfairly by Zopa Limited when it closed its peer to peer (P2P) lending platform. He says the sale of his loan portfolio has been completed without paying him the fair value of his investments.

## What happened

Mr F held P2P lending accounts for a number of years on Zopa's platform and invested funds in return for interest.

On 7 December 2021, Zopa advised investors that it would be stopping consumer investments and transferring all loans to its newly formed parent company. It proposed to buy Mr F's loan portfolio at current face value (plus any interest that borrowers had already paid up to the date of sale) and said he'd receive his investment balance back by 31 January 2022.

Shortly after receiving this notice, Mr F complained as he felt the decision made was made on beneficial terms to Zopa as it would benefit from future interest on the loans and it was to the detriment of its investors like himself. He questioned the legality of the decision and said Zopa had made changes to its principles without telling him.

Zopa didn't uphold the complaint. In summary it said:

- The more stringent conduct rules introduced by the FCA in December 2019 were material to the decision to close the platform. The new regulation included the requirement to test prospective customers on their understanding of the risks of investing in P2P loans and certify both new and existing investors. This has made it more expensive to run the platform. And it had seen a decline in the P2P market in recent years. All of this meant the directors considered the ongoing commercial viability of the business.
- In relation to Mr F's comments around future income, investments are not a guaranteed source of income. Whilst Mr F may have received future income from his loans, there is also a chance that he would incur some losses. As part of the sale, Zopa purchased all active loans at face value, including loans in arrears and therefore may not repay in full.
- Zopa was purchasing his loans at face value is a fair price and is the best outcome for investors as the purchase will lock in any returns already earned and ensure funds are available to withdraw in a timely manner, rather than having to wait for the investment balance to drip feed back over several years.
- It updated its Investor Principles in December 2020 where it referenced that it had made updates to its contingency plans.

As Mr F didn't agree with this response. He referred his complaint to this service for independent review. One of our investigators looked into the complaint. He didn't uphold it.

In August 2023, I issued a provisional decision. This is what I said:

*"Zopa has provided the reasons why it decided to close its P2P platform to retail customers. It says this was essentially due to commercial viability, market conditions and challenges brought about by regulation. So, it appears Zopa was exercising its commercial judgement when deciding whether its P2P platform was viable on an ongoing basis. This is something it is able to do and not something I am able to make judgement on. But I can consider whether Mr F has been treated fairly in how his investments have been administered as a result of this decision.*

*As a starting point, I've reviewed Zopa's Investor Principles. These explain if Zopa wants to end the agreement it will give 30 days' notice to lenders. There is also a section on contingency. This covers situation where the platform is no longer able to operate and gives the examples of changes in regulation or market conditions causing this. It goes on to say, in accordance with regularity obligations, it has put in place a wind-down plan and gives a link to the wind-down plan. There is a warning that outstanding loans may be sold to a third party for less than the amount had they been held until the end of the loan terms.*

*This all supports that it was possible for Zopa to close the platform in circumstances where it was no longer able to operate the platform in a sustainable and profitable manner. The Investor Principles gave Zopa broad discretion in terms of closing the platform.*

*But I do note the points Mr F has raised concerns about the contents of the Investor Principles changing in December 2020 (and also in July 2021). He has provided a copy of the previous version. This does contain different information to the latest version. The key part Mr F has identified is to Principle 14. This section was titled Back-Up Servicing but was changed to Contingency Planning. Zopa say in the updates section of the Principles "On 18 December 2020 We made changes to Principle 14 (and related Principles) to give more details about contingency planning".*

*Mr F argues that changes made to the Investor Principles in December 2020 and July 2021 – effectively disadvantaged investors like himself by laying the groundwork for the process that followed in December 2021 when the platform closure was announced (which he thinks treats him unfairly).*

*I reviewed the changes Mr F has identified. In summary, before the December 2020 update this section said in the event of insolvency or if it is in the best interest of investors and borrowers Zopa may transfer its obligations to service the loans to a third party. It goes on to give details of an appointed back-up third party but says it can select a different back-up servicer and/or agree new terms with our back-up servicer without giving notice.*

*The December 2020 update to the Investor Principles removed this reference to transferring to a back-up servicer and introduced that Zopa put in place a wind-down plan to ensure an efficient and orderly wind-down with minimal impact to our customers. It links to the wind-up plan, but this doesn't form part of the Investor Principles, it's a sperate section on Zopa's website. There is a new part to the terms that say "If we invoke our wind-down plan and reasonably determine that it would be in your best interests to sell your loans to a third party you acknowledge that we may sell your loans for less than you would have received had you held the loans until the end of the loan term."*

*Having looked at both sets of terms – although different – neither actually commits Zopa to a course of action. In both version it says what it may do. So, I'm not persuaded by the argument that there were changes made that disadvantaged investors or were against their interests. I say this as Zopa hadn't actually committed to a definite position on what would happen if the platform closed. Mr F seems to have interpreted it that Zopa did guarantee something would happen but changed that. But my reading of the situation is that they gave a potential action they might take that was informative but not definitive. So, I haven't found*

*reasons to say that changes in the Investor Principles have led to Mr F suffering a detriment. Instead I have sought to make an overall finding on what actually happened to decide whether he has been treated unfairly.*

*Mr F argues the email he received about the December 2020 updates was misleading. He says the changes were far more than mere 'details' and 'clarifications' and instead gave Zopa crucial powers and reduced investors' rights. I don't agree this to be the case. For similar reasons explained above the changes did provide different information about what may happen if the platform was to close but I don't find it allowed Zopa to act against investors interests in the way Mr F implies.*

*At the time of closure notice Zopa's website gave details of its wind-down plan. I've reviewed this information. It details what would happen if Zopa were to stop operating its P2P platform – and says "we may carry out one of the following strategies". It then provides three options for actions it may take. The last scenario is of relevance here as this describes the sale of loans. It says Zopa "may sell your loans for less than you would have received had you held the loans until the end of the loan term. But, if we decide to do this, we'll notify you of our decision 30 days in advance of the proposed sale and you'll be able to opt out of the sale and retain your loans."*

*I also note Mr F has identified changes Zopa made to its wind-up plan in 2020 – which he makes similar claims about how the changes were detrimental to him. On face value I don't find it unreasonable for Zopa to make changes to its wind-up plans. Having a wind-up plan is a regulatory obligation. The section on Zopa's website that gave this information doesn't form part of Mr F's contract with Zopa. And as with above, while the information did involve changes to what investors were told, it still only provided potential action Zopa may take in the event of a wind-up, it didn't commit to a specific course of action. So while I acknowledge what he is saying, I don't think these arguments support that he has been treated unfairly.*

*As mentioned previously, I'm considering the overall fairness of the circumstances of how it implemented the closure of the platform. So, I've considered the above alongside the circumstances of what actually happened with the sale of Mr F's loans. I've done this to in order to reach a decision on whether there have been failings that led to Mr F being treated unfairly – and if there has whether he has suffered a financial loss as a result.*

*Mr F was given notice of Zopa's intention to sell his loans in early December. He was told this would be completed by the 31 January 2022, but his loans started to be sold soon after the notice was given, and the full sale happened by mid-January. Mr F wasn't given an option to opt out of sale and retain his loans. So, on the one hand, the evidence doesn't support that Zopa followed it's published wind-down plan. On the other hand, the published wind-down plan provides potential strategies that Zopa may follow as oppose to something it will categorically follow.*

*I can understand why Mr F feels Zopa has acted unfairly by not providing him with the ability to opt out of loan sale and remain invested. But I don't think it is clear cut that there has been a failing here. And in any case even if I were to accept there was a failing, I don't think overall Mr F has been treated unfairly or suffered a loss. I'll explain why.*

*Zopa's approach to repaying loans involved Mr F receiving his capital back for loans and interest that had been acquired. The benefit of taking this course of action was it gave a quick guaranteed return of capital on loans – including those that had late payments. The risk of default on loans with payment problems is heightened, so the fact capital was returned on these loans was beneficial to lenders like Mr F. I appreciate Zopa's approach did mean there was no option to continue earning interest on loans that hadn't reached maturity.*

*But I'm also conscious that future interest payments weren't guaranteed either, and the risk of future default remained for all loans - even those with a good payment history.*

*I acknowledge Mr F believes he should receive a return of his capital and all the interest due from the full loan terms – because this is what borrowers had agreed to do. And because he hasn't received this, he has lost out. But I don't think it is reasonable to ask Zopa to pay returns where there was no guarantee they would be achieved. So, I agree that Zopa's approach of assessing the sale price at the time is a fair and reasonable way of deciding what should be returned to Mr F. While I understand why Mr F would have preferred to continue investing, I don't agree that he has suffered a financial loss as a result of the action Zopa took.*

*Mr F has raised a point about a conflict of interest. His concerns centre around the sale of his loans to an affiliate company, and whether this has resulted in him not receiving a fair price for his loans. Firstly, I haven't seen evidence to support that Zopa has made a financial gain at Mr F's expense. I've previously explained why I think the actions Zopa took hasn't treated him unfairly – particularly around paying face value for loans in arrears. While I acknowledge that the loans sale involved an affiliate of Zopa acquiring his loans, I don't think this in itself means Mr F has not received a fair value for his portfolio."*

Mr F responded and provided further submission for me to consider. In summary he said:

- He remains concerned about whether he has suffered a loss as a result of the wind-up and maintains Zopa hasn't provided figures that would prove this either way.
- In his view, whether he has suffered a loss or not depends on whether what Zopa paid for his loans is equal to or greater than what he would have received if he kept his loans to maturity. If it is less, he believes he has suffered a loss. To do this, he has requested a further breakdown of data to allow for a calculation to be completed.

Zopa didn't anything further to add.

**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've considered the further submissions Mr F ahs made, but they haven't led me to reach a different conclusion to that I set out in my provisional decision. I will explain why.

Mr F says his understanding of my findings is that he hasn't suffered a loss because being paid face value for his loans in arrears, compensated him for the future interest and bonuses (net of default) he won't receive as a result of the platform closure. From his comments it doesn't seem that Mr F has interpreted by findings as I intended. So, I will provide further clarity on why I don't believe he has suffered a loss.

Mr F has presented an equation to establish whether he has suffered a loss. As part of this equation it includes the interest and bonuses he has forgone as a result of the platform closing and loans no longer associated with his accounts. But I don't agree this is something that should be included in a loss assessment. I explained previously that I was satisfied that Zopa had the ability to end agreements. This in line with the Investor Principles which explain if Zopa wants to end the agreement it will give 30 days' notice to lenders. Once an agreement has ended, lenders such as Mr F have no entitlement to future returns from the investment.

Mr F has argued these future returns should be included in the assessment of loss when considering what he was paid out for his loans. But again, I don't find it reasonable to take

this approach. I've already explained why I don't agree that Mr F should receive all the interest due from the full loan terms. The assessment of value of Mr F's investment is at the point the loans were sold. He received face value, so a full return of his capital for active loans and those in arrears. Mr F's loans were acquired by a third party (notwithstanding his concerns about this), so there is an argument that it's reasonable for the new owners to expect to receive the same level of interest on the portfolio that the current owners (i.e. the Zopa lending investors) were earning. I'm also conscious that the risk the new owners are taking on in purchasing the loan portfolio hasn't changed and so it follows that the reward for doing so should remain the same as what investors were receiving. It wouldn't be equitable for Mr F to receive the future return without risk. All of this leads me to a conclusion that Zopa has acted reasonably by not including further payments for future interest and bonuses when deciding the value of Mr F's loans.

The point I made about being fairly compensated because he was paid face value for loans in arrears was linked to the fact he wasn't paid anything for his defaulted loans. So, the fact he had receive all of his capital back for loans that had run into payment problems, was a fair offer due to the heighten risk of default on those loans. And I viewed it reasonable to say this offset the fact his defaulted loans were acquire without payment despite the theoretical possibility of recovery action returning some funds from these loans.

I acknowledge that Mr F would like further information to be gathered and a loss calculation based on the equation he set out. Zopa has provided information on what Mr F was paid for his loan portfolio. It has confirmed he received a total payment of £594,582, of which £53,612 related to loans that were in arrears. He would also like to understand the hypothetical returns he would have received had he kept his loans to maturity – and has suggested using advertised projections of returns and default rates to establish this. I've explained above why I don't agree with the basis he set out for assessing loss. For this reason, I don't think Zopa is required to provide the information Mr F requests in order for me to decide his complaint.

In conclusion, for the reasons given in my provisional decision and those above, I think overall Zopa has treated Mr F fairly. The Investor Principles do explain the possibility of Zopa deciding to end the agreement and sell outstanding loans either to itself or a third party. On balance, I'm satisfied the decision to repay Mr F the full capital on his loans (included those with late payment) was fair in the circumstances. I understand this will come as a disappointment to Mr F, but I haven't found that Zopa need to pay him any further compensation from the loan sale.

**My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 6 October 2023.

Daniel Little
**Ombudsman**