

The complaint

Mrs E complains that Zopa Bank Limited irresponsibly lent to her.

What happened

In February 2021 Mrs E entered into an unsecured fixed sum loan agreement with Zopa. Under this agreement Mrs E borrowed the sum of £12,000 to be paid back over a period of 60 months. The monthly repayments were £237.57.

Mrs E says Zopa shouldn't have agreed the loan as it was unaffordable for her. So, she complained to Zopa. In doing so, she told it she'd been deceived into transferring the funds to a third-party as part of a romance scam.

Zopa responded to Mrs E's complaint but didn't uphold it. It said that Mrs E didn't dispute applying for the loan – which she had said was for home improvements, or that the funds had been correctly credited to her personal current account which was held with another bank. It also said that Mrs E's loan application had passed its credit, affordability and security checks, and her income was confirmed as genuine. Based on this, and the information it obtained via the credit reference agencies, it said it found the repayments of £237.56 per month to be affordable for her.

It added that, while Mrs E maintained her first two payments to the loan, she had made no further repayments to the loan, so it defaulted the account to prevent any further interest accruing.

Unhappy with the response, Mrs E referred this complaint to our service. Our investigator looked into it, and he thought the complaint should be upheld. He didn't think Zopa had done enough checks to ensure the loan was affordable for Mrs E. He said that if Zopa had done more checks it would have found that Mrs E didn't have enough disposable income to sustainably meet the monthly repayments. He recommended that Zopa remove any interest and charges applied from February 2021 onwards and contact Mrs E to arrange a suitable repayment plan for the outstanding balance.

Zopa accepted the investigator's findings, but Mrs E didn't. She said that in separate complaints about her current accounts held with other banks, it had been accepted that she was a victim of fraud. But as she had only received a partial refund, she was unable to repay what she had borrowed from Zopa and other lenders. She said that, as the investigator had agreed that this loan shouldn't have been provided to her, Zopa should write off the outstanding balance.

The Investigator considered what Mrs E had said but he didn't change the outcome he had reached. As Mrs E didn't agree, the complaint has been passed to me to reach a final decision. For clarity this decision solely relates to Mrs E's complaint about Zopa's decision to lend to her. I make no findings on any other complaints Mrs E has referred to this service.

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 aware that I've summarised this complaint in far less detail than Mrs E and I've done so using my own words. I'm also not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is a fair outcome to this complaint.

Mrs E complained that Zopa shouldn't have provided the loan to her as it was unaffordable. And, overall, I agree with our investigator. Based on what I've seen, I don't think Zopa did enough checks before agreeing to lend to Mrs E. And I'm persuaded that had it done more checks it would have found that Mrs E didn't have the disposable income available to sustainably meet the monthly repayments. It follows that I find Zopa shouldn't have lent Mrs E the money.

In upholding the complaint, our Investigator recommended that Zopa should remove any interest and charges applied to the loan from February 2021 onwards and contact Mrs E to arrange a suitable repayment plan for the outstanding balance. Mrs E hasn't accepted this outcome – in the sense that she doesn't think the redress goes far enough. Due to wider circumstances – being the victim of a scam, she now owes a substantial amount of money to Zopa and other lenders, and she says she can't afford to pay back the money she borrowed. She believes it would be fairer if Zopa wrote off the outstanding balance of the loan.

Generally, this service would say that if a consumer had the use of the money they borrowed they should pay it back. But the business who lent the money shouldn't profit from it – hence the investigator's recommendation for charges and interest to be refunded. So, I've thought carefully about this to decide if there is any reason why I should depart from this approach.

Having done so, while I'm sorry to disappoint Mrs E, I've found this approach to be fair and reasonable in this particular complaint. While I accept Mrs E is now in a difficult position as she's being asked to repay money she passed on to a third-party, I don't find I can fairly and reasonably hold Zopa responsible for that. It shouldn't have lent to her, but it did provide the loan to Mrs E on the understanding the money was for some home improvements. It wasn't to know, and couldn't reasonably have foreseen, it would be used in the way it was. So, while Zopa shouldn't profit from this matter, I find it's fair for Zopa to ask for the capital to be repaid.

This complaint is about Zopa's decision to lend to Mrs E and that's what I've considered. Mrs E is now saying she can't afford to pay the loan back. And given I've found that Mrs E didn't have the disposable income to meet the contractual loan repayments, I accept it's likely that she can't make substantive repayments to the capital element now. But I can't say that Mrs E can't afford to pay something. And I think that's a conversation Mrs E must have with Zopa.

Zopa has an obligation to treat consumers in financial difficulty positively and sympathetically. But that means both Mrs E and Zopa working together to see what remedy is most suitable in her particular circumstances. If, when such a conversation has happened and Zopa has put forward a remedy to assist, Mrs E doesn't feel Zopa has treated her fairly

that would be the basis of a new complaint that she would need to raise with Zopa before referring it to this service. It doesn't form part of this complaint.

I note Zopa has defaulted Mrs E's loan account, and this will have had a negative impact on her credit file. I've looked at a copy of the loan agreement and I can see this makes provision for Zopa to take action when payments are missed. And from what I've seen, Zopa made the decision to default Mrs E's loan account after she had missed six monthly repayments – which is line with industry guidance. Zopa also issued arrears letters and a default notice before taking this action. In doing so, this has prevented further charges and interest accruing.

Given Mrs E has said she can't afford to pay back the loan and as I've not seen anything to say she has meaningfully engaged with Zopa about repayment of the loan prior to the default taking place, I don't think Zopa has treated Mrs E unfairly in this respect.

My final decision

For the reasons given above I uphold Mrs E's complaint about irresponsible lending. Zopa Bank Limited should now:

- Rework Mrs E's loan account so that all the interest, fees and charges applied to if from February 2021 onwards are removed and no more are applied.
- If an outstanding balance remains once these adjustments have been made, Zopa should contact Mrs E to arrange a suitable remedy taking into account her current financial situation and its obligations to treat her financial difficulties positively and sympathetically.
- If no outstanding balance remains, any adverse information should be removed from the credit file.
- If the refund means there's no remaining balance, any extra should be treated as overpayments and returned to Mrs E.

Pay interest of 8% simple a year on any overpayments from the date they were made (if they were) to the date of settlement†.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs E to accept or reject my decision before 11 October 2023.

Sandra Greene
Ombudsman