The complaint

Mrs S says Zopa Bank Limited lent to her irresponsibly.

What happened

Mrs S took out a 60-month loan for £13,500 in September 2022. The monthly repayments were £382.61 and the total repayable was £22,956.52.

Mrs S says she was heavily indebted when she applied and the loan was not affordable. Zopa says it considered Mrs S's credit profile, credit history and the affordability. On this basis its decision to lend was not irresponsible.

Our investigator upheld Mrs S's complaint. She said Mrs S was already repaying more than she could afford on her current credit commitments and was reliant on her overdraft. Zopa disagreed with this view saying Mrs S's declared income was verified externally and so her application was automatically approved. It feels Mrs S has not used the loan for its intended stated purpose of debt consolidation. It pointed out as the loan APR was 25.9% this was likely less than Mrs S was paying on her credit card accounts.

Our investigator explained however that as the credit check showed Mrs S had £21,240 of debt including three overdrafts better checks were needed. And these would have shown Zopa the loan was unaffordable, even taking into account the loan was for debt consolidation.

Zopa still disagreed and asked for an ombudsman's review.

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.

Our approach to unaffordable/irresponsible lending complaints is set out on our website and 've followed it here.

The rules and regulations when Zopa lent to Mrs S required it to carry out a reasonable and proportionate assessment of whether she could afford to repay what she owed in a sustainable manner. This is sometimes referred to as an affordability assessment or an affordability check.

The checks also had to be borrower-focused. So Zopa had to think about whether repaying the credit sustainably would cause any difficulties or adverse consequences for Mrs S. In other words, it wasn't enough for Zopa to simply think about the likelihood of it getting its money back, it had to consider the impact of the repayments on Mrs S.

Checks also had to be proportionate to the specific circumstances of each loan application. In general, what makes up a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of credit they have applied for. In light of this, I think that a reasonable and proportionate check ought generally to have been more thorough:

- the lower a customer's income (reflecting that it could be more difficult to make any repayments to credit from a lower level of income);
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet higher repayments from a particular level of income);
- the longer the period of time a borrower will be indebted for (reflecting the fact that the total cost of the credit is likely to be greater and the customer is required to make repayments for an extended period).

There may also be other factors which could influence how detailed a proportionate check should've been for a given application – including (but not limited to) any indications of borrower vulnerability and any foreseeable changes in future circumstances. I've kept all of this in mind when thinking about whether Zopa did what it needed to before agreeing to lend to Mrs S. So to reach my conclusion I have considered the following questions:

- did Zopa complete reasonable and proportionate checks when assessing Mrs S's loan application to satisfy itself that She 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?

I can see Zopa asked for some information from Mrs S before it approved the loan. It asked for details of her income and employment. It also checked her credit file to understand her credit history and existing credit commitments. It asked about the purpose of the loan, which was debt consolidation. From these checks combined Zopa concluded Mrs S had enough monthly disposable income to afford to repay the loan.

I am not satisfied these checks were proportionate given the term of the loan and the level of debt that Zopa learnt Mrs S already had through its credit check. Zopa argues as Mrs S's declared income was successfully verified the application was automatically accepted so no further checks were needed, and the loan was for debt consolidation so would benefit Mrs S financially. But I disagree that this was a reasonable approach in the circumstances of this case.

Mrs S was already spending a significant proportion of her income on her existing debt. I cannot see from the evidence submitted that Zopa understood which other credit accounts she intended to repay, and whether they were loans or running credit accounts that would remain open with the same limit available to her. It ought to have checked this. So I cannot see it was able to calculate how its loan would reduce Mrs S outgoings to know that its repayments would be more sustainably affordable and improve her financial position. That seems wholly assumptive. Even if Mrs S had used all of the loan to settle other debts Zopa was still increasing her total indebtedness from £21,240 to £30,696.52. And as Mrs S was already reliant on three overdraft facilities (two of which were almost at their limit) I think it needed to have much firmer and clearer assurances than it did about how Mrs S planned to use the loan proceeds. The loan was over a long term for an unsecured product and I don't think Zopa had the information it needed to conclude there was no risk Mrs S would not need to borrow again to repay or suffer some other financial harm during its term.

I have looked at Mrs S's bank statements to see if better checks would have shown Zopa the loan was affordable but I can't fairly conclude they would. As I have said Mrs S relied on her overdraft(s) so she was already in essence borrowing to make her existing repayments. I can't see Zopa knew she planned to repay these facilities. This means she may well have continued to borrow on her current accounts to repay this loan, had she settled other debts. So she would have been borrowing to repay to meet her contractual requirements under Zopa's loan agreement.

Or, if she had opted to repay her overdraft(s) she would not have reduced her other monthly commitments by enough to mean that she wasn't still needing to pay a significant portion of her income on credit every month. As the industry knows this is often a predictor of pending financial difficulties.

In the round, I do not think Zopa ought to have given this loan to Mrs S. I have not found any evidence it has acted unfairly towards Mrs S in some other way.

Putting things right

I think it's fair that Mrs S should only have to repay the money she borrowed and had the use of. So I think Zopa should refund all of the interest and charges Mrs S has paid on the loan.

So Zopa must:

Add up the total amount of money Mrs S received as a result of having been given the loan. The repayments Mrs S made should be deducted from this amount.

a) If this results in Mrs S having paid more than she received, any overpayments should be refunded along with 8% simple interest* (calculated from the date the overpayments were made until the date of settlement). Zopa should also remove all adverse information regarding these loans from Mrs S's credit file.

b) If any capital balance remains outstanding, then Zopa should attempt to arrange an affordable and suitable payment plan with Mrs S. Once Mrs S has cleared the balance, any adverse information in relation to these loans should be removed from their credit file.

*HM Revenue & Customs requires Zopa to take off tax from this interest. Zopa must give Mrs S a certificate showing how much tax it's taken off if she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I am upholding Mrs S's complaint. Zopa Bank Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 19 February 2024.

Rebecca Connelley
Ombudsman