DRN-4417094

The complaint

Mr E complained that Zopa Bank Limited ("Zopa") irresponsibly granted him a personal loan in October 2021 that he couldn't afford to repay.

What happened

In October 2021, Mr E took out a loan of £10,500 over 60 months, with a monthly repayment of £260.47 and an APR of 18.29%. Just under £5,500 of this loan was used to repay an earlier loan (the original amount of which was £9,500), granted in November 2019, which had an APR of 6.73% and a monthly repayment of £226.14. Mr E said he used the remaining amount – just over £5,000 – to pay off a credit card.

Mr E is unhappy that the loan application was dealt with entirely online, and within a matter of hours, with no discussion with Zopa before approval (especially as he considers his age to be a relevant factor – he was in his late seventies when he applied for the loan). He also feels that it was unfair of Zopa to offer a refinance loan at a significantly higher APR and over a longer term – he says that this has put a strain on his finances, and the loan is unaffordable.

Mr E has also told us that he had had ongoing health problems following major surgery, and he was concerned that there were no safeguards in the application process to help customers with an altered mental capacity. (I should say here that Mr E has said that his health issues have since improved).

Mr E says he would like Zopa to write off the remaining balance of this loan and refund the payments he has already made, with interest. He would also like to be compensated for the anxiety and inconvenience suffered.

Mr E complained to Zopa about all this. Zopa said it had carried out appropriate checks before granting the loan, and told Mr E that it did not uphold his complaint. It also said that it was not aware of Mr E's health problems when he applied for the loan.

Mr E then brought his complaint to this service. Our investigator looked into it, but didn't think the complaint should be upheld. Mr E didn't agree, and asked for his complaint to be reviewed by an ombudsman.

I issued a provisional decision in October 2023, in which I explained why I was minded to disagree with our investigator and to uphold Mr E's complaint. Both parties have now responded and therefore I can now issue my final decision. Mr E said he agreed with my conclusions, but Zopa said it did not. I have discussed this further below.

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 considering complaints about unaffordable and irresponsible lending is set out on our website, and I've taken this into account here.

I've decided to uphold Mr E's complaint. I'll explain why.

In summary, before providing credit, lenders need to complete reasonable and proportionate affordability checks. There isn't a set list of checks required of a lender, but it needs to ensure the checks are proportionate when considering matters such as the type and amount of credit being provided, the size of the regular repayments, the total cost of the credit and the consumer's circumstances. So I've considered whether Zopa completed reasonable and proportionate checks to satisfy itself that Mr E would be able to make the repayments on the loan account in a sustainable way.

For the avoidance of doubt, I am only considering the loan granted in October 2021 – Mr E has not made a complaint about the earlier loan. I also appreciate that Mr E is unhappy about the interest rate on the loan, but this would have been a commercial decision by Zopa, and I am satisfied that this was clearly shown on the loan agreement before Mr E agreed to proceed. So I will make no further comment on this point.

I set out my reasoning in my provisional decision as follows:

"Mr E sent in some examples of bank statements for the current account he holds with his wife, and information about his sources of income. Zopa provided a copy of the loan agreement, and details of the checks it carried out before granting the loan, along with the information it had from Mr E's credit file and details of the earlier loan. It also sent in a recording of the call Mr E made to Zopa to register his complaint.

Looking at the information Zopa sent in, I can see that it verified Mr E's annual income from credit reference agency records at £35,000 before tax, and his net monthly income as £2,288.51. Mr E told us that he had income from two occupational pension schemes, his state pension and a part-time job, and these figures are shown on one of the bank statements that Mr E sent in. It's not clear whether these payments were made after any deduction of tax, but given the amounts involved, I think it's quite possible that they were not, in which case the figures from the bank statement match the figures that Zopa verified.

I should say here that, had tax already been deducted, Mr E's net income would've been higher than the figures used by Zopa, but for the reasons set out below, this doesn't affect my conclusions.

Turning to Mr E's commitments, the information used by Zopa in its affordability assessment showed seven credit cards with outstanding balances, and two personal loans (one of which was the earlier loan issued by Zopa). After calculating the required monthly payments on the credit cards and loans, and allowing for Mr E as being responsible for half of the rent on his home, there was a disposable income of £619.96. The new loan, replacing the earlier one, increased Mr E's monthly payments by £34.33, leaving an overall disposable income of £585.63.

We asked Zopa how it took account of general living costs, as this wasn't clear from the information it had provided. It said it used figures based on Office for National Statistics benchmarking, in this case £620.

I've first considered whether Zopa carried out reasonable and proportionate checks before granting the loan.

Zopa said that Mr E had no adverse payment history on his credit file, and it took account of his debt-to-income ratio and disposable income. The application passed all of the credit and affordability checks, and the income stated on the application was verified through a credit reference agency. There was manual underwriting involvement but no cause for concern was identified, and the loan was approved. Zopa also said that the purpose of the loan was to consolidate existing debts, so it would have expected Mr E to pay off some other credit.

Based on the evidence I've seen, I'm not satisfied that Zopa did carry out reasonable and proportionate checks. I say this because the copy of Mr E's credit file at the time of the application, which Zopa provided, showed that he had access to 13 credit cards. I accept that not all had outstanding balances, but the total credit available was in the region of £35,000. Two of these credit cards had been taken out less than six months before the loan application. And Mr E's unsecured debt totalled just under £24,000 at the time of the application.

I think this, along with the level of disposable income, which was below the benchmark figure that Zopa was using in this case, should reasonably have prompted further enquiries to Mr E to check what credit commitments were intended to be repaid, and to look further at his income and expenditure.

Looking at Zopa's underwriting notes, I can see that the level of Mr E's disposable income was highlighted, but there's no evidence to confirm that this was considered in any detail. The notes show that Mr E was to be contacted to verify his identity and the purpose of the loan, and there is a call from Mr E noted at 11.09 on 25 October 2021. There is no record of what was discussed and Zopa can't provide a call recording. The loan was then noted as approved just over an hour later.

As I noted above, I have some example bank statements relating to Mr E's joint current account with his wife. Mr E told us that he was the main income earner, and his wife's income was her state pension, although I can see that there were some other state benefits being paid into the account. Nonetheless, these were not substantial, and I also note that there was a debt repayment plan entry on the statements, which Mr E said was that of his wife (had it been Mr E's there would have been evidence on his credit history).

I'm satisfied that Mr E was indeed the main income earner, and it seems to me that Mr E would have been largely responsible for the rent - so more than the 50% allowed for in Zopa's assessment – and most of the joint living costs. I think this would have taken up most, if not all of Mr E's disposable income. I've taken account of Mr E's income possibly being a little higher than that used by Zopa, depending on his tax position, but on the basis that I think Mr E was largely responsible for the household outgoings, I think Mr E's disposable income would still have been insufficient to cover the new loan on a sustainable basis.

I've also thought about the new loan payment being some £35 higher than the previous one. I accept this is not a significant amount, but in this decision I am looking at Mr E's overall position in October 2021, and whether the new monthly payment was sustainable. I have kept in mind that the previous loan had 24 months left to run as at October 2021. The new loan was over 60 months. So I've also taken account of the need for Mr E to continue to make monthly payments for a further 36 months.

Overall, based on the evidence I've seen, I think that if Zopa had carried out more detailed checks on Mr E's income and outgoings, those checks would've shown that the monthly repayments on the new loan were unlikely to be sustainable. I say this because, taking account of the commitments detailed above, and Mr E's circumstances. I'm not satisfied that

Mr E was left with enough disposable income to manage those repayments sustainably over a 60-month term. So I don't think Zopa acted fairly in granting this loan to Mr E."

I said in my provisional decision that I was proposing to uphold Mr E's complaint for the reasons I had stated. Mr E responded to say that he agreed with my conclusions. Zopa reiterated that it had verified the details provided to it by Mr E when he applied for the loan via one of the credit reference agencies, and as the checks were satisfied, no further evidence was required. Zopa further said that as its checks deemed the loan affordable, it disagreed with my findings.

I've thought about what Zopa said. However, I explained in my provisional decision why I thought that, in Mr E's case, Zopa hadn't carried out reasonable and proportionate checks, and why I thought it should have gone further. As no new evidence has been provided, I have no reason to change my conclusions, and therefore I uphold Mr E's complaint.

Mr E raised other concerns, which I commented on in my provisional decision. Firstly, he was unhappy that there were no safeguards in the application process to help customers with an altered mental capacity. This was because, as a result of major surgery, Mr E said his character changed. It has clearly been a very difficult time for Mr E, and I am glad to hear that things are improving. However, Zopa said it wasn't made aware of Mr E's difficulties, so I can't reasonably expect it to have made adjustments.

Mr E's second concern was age, in that he was in his late seventies when he took out the loan, and he didn't think this was considered. There was a reference on Zopa's underwriting notes to the applicant being over 60, but it's not clear what action that may have prompted. I think this is a matter that would depend on individual circumstances. And as I have upheld Mr E's complaint for the reasons set out above, I don't consider that I need to make a finding on this particular point.

Putting things right

I think it's fair and reasonable for Mr E to repay the capital that he borrowed in October 2021 because he has had the benefit of that money. But he has paid interest and charges on a loan that shouldn't have been provided to him. Zopa must put this right.

It should:

- remove all interest, fees and charges applied to this loan from the outset. The payments Mr E has made should be deducted from the new starting balance – the £10,500 originally lent. If, once all adjustments have been made, this shows that Mr E has made overpayments leading to a credit balance, these overpayments should be refunded to Mr E, together with interest at 8% simple a year* from the date they were made to the date of settlement.
- if, once all adjustments have been made, this shows that Mr E still has an outstanding amount to repay, Zopa should contact Mr E to arrange a suitable repayment plan.
- Zopa should remove any adverse information (if any) it has so far recorded on Mr E's credit file.

*HM Revenue & Customs requires Zopa to deduct tax from any award of interest. It must give Mr E a certificate showing how much tax has been taken off if he asks for one.

My final decision

For the reasons set out above, I have decided to uphold Mr E's complaint. Zopa Bank Ltd should compensate Mr E as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 22 November 2023.

Jan Ferrari
Ombudsman