

The complaint

Miss J complains that Zopa Bank Limited trading as Zopa irresponsibly provided her with a fixed sum loan which was unaffordable for her.

What happened

In October 2021 Miss J applied for a fixed sum loan for £10,000 from Zopa for the purpose of consolidating her debts. The loan was for four years, and the repayments set at £339.16pm.

Miss J says that, despite using the loan to clear credit card debts, she continued to struggle to pay her living costs and as well as the loan payments and so had to use her credit cards again to cover expenses. She says that she found the loan repayments unaffordable and had to seek assistance from a third-party debt charity organisation. The loan is currently in an arrangement.

In August 2023 Miss J complained to Zopa that it had irresponsibly lent her the money. Zopa didn't uphold her complaint and said it had carried out reasonable and proportionate checks as to the affordability of the loan for her.

Miss J was unhappy at Zopa's response and complained to this service. Our investigator recommended that Miss J's complaint should be upheld. She said that although Zopa had carried out checks on Miss J's credit liabilities, it should have done more to understand her financial situation. And that if it had, Zopa would have seen that the loan was sustainably unaffordable for her.

Our investigator said that it would be fair for Miss J to repay the amount of the loan, but Zopa should refund her all the interest and charges she had paid.

Miss J agreed with our investigator's view, but Zopa disagreed. It said that the purpose of the loan was for Miss J to consolidate her debts and had been sufficient to clear all of her outstanding credit (save for the hire purchase agreement for a car). And by clearing those liabilities, Miss J would have had more than sufficient income to pay for the loan. It also queried the amount of rent Miss J was paying as she had declared only half that amount when she had applied for the loan.

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.

We've set out our approach to unaffordable or irresponsible lending complaints on our website and I've considered this when deciding Miss J's complaint.

The rules and regulations in place throughout Zopa's lending relationship with Miss J required it to carry out an assessment of whether she could afford to repay what she owed in a sustainable manner. Any such assessment needed to be "borrower focused", meaning they should focus on the affordability of repayments and the potential for adverse

financial impact on Miss J, rather than on the likelihood the credit would be repaid. Any assessment needed to be proportionate to the circumstances.

There isn't a prescribed list of checks a lender should make. But the kind of things I would expect lenders to consider are the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I would also expect it to have had access to information on the operation of each of the accounts. And I would look to see if the checks carried out had been proportionate to the amount of credit offered.

However, this isn't an exhaustive list and even if not all of these checks were carried out, I wouldn't necessarily think the lending had been irresponsible.

Here, Miss J applied for a fixed sum loan in the amount of £10,000 repayable over four years at the amount of about £340pm. Miss J informed Zopa that the purpose of the loan was to consolidate her outstanding debts.

I've seen that Zopa carried out checks via a credit reference agency which didn't show that Miss J had any adverse information as to her management of her credit accounts. It also showed that Miss J had four credit cards together with an overdraft on her current account. She also had a hire purchase agreement for a car plus credit for insurance and another item.

Miss J had declared when applying for the fixed sum loan that she had an income of £29,000 gross per year which Zopa calculated equated to £1,948.51 per month. Miss J's total amount of unsecured debt amounted to £9,965 and Zopa calculated that she was paying back 5% of that amount each month, meaning she was making total repayments of around £470pm.

In addition, Miss J was paying about £280pm for the hire purchase agreement plus two additional credit payments for the insurance and another item. This made Miss J's monthly repayments for her borrowings of around £850pm. This equates to around 45% of her income.

Zopa calculated that the repayments for her credit agreements plus the rent she had reported as £350pm meant Miss J had a disposable income of about £725pm, which it said would increase once she had used the loan to pay off her credit card debts and overdraft.

I've seen that Miss J was utilising over 80% of the total limit of her credit cards and that her overdraft was also close to its limit and had been for a substantial period. And I think this suggests Miss J was becoming over reliant on credit to sustain her lifestyle. As the loan was for consolidation of her debts and amounted to one third of her gross annual income, then I think that in these circumstances it would have been proportionate and reasonable for Zopa to have asked further questions about Miss J's financial situation to verify that the repayments on the loan were affordable for her going forward.

I don't know what additional checks Zopa would have undertaken. If it had asked for proof of income or further details about her expenses, then looking at the bank statements Miss J has provided to this service, I think it would have been clear that Zopa had overestimated the amount of monthly disposable income Miss J had by a large margin. In particular, the bank statements show her rent was actually £725pm and not £350pm. And I can't see that anyone else was making a contribution to that cost, so I think it's fair to consider Miss J was paying the whole amount of £725 and not the smaller amount of £350pm as declared on the loan application.

I've also seen that Miss J's monthly income is actually around £1,700pm including child benefit. From her income, as shown by the statements she is also paying for travel, childcare costs, subscriptions services and food. Prior to paying off her credit commitments with the loan, I've seen Miss J's outgoings were around £1,840pm and therefore exceeded her income.

While I accept that clearing the credit cards and overdraft with the loan would have reduced Miss J's payments from around £470pm to around £340pm, I don't think this saving was sufficient to have made this loan sustainably affordable for her. And that almost immediately after taking the loan, Miss J would have needed to resort again to using her credit cards and overdraft facility to cover day to day expenses and thereby increasing her indebtedness.

I therefore think it's reasonable to say that based on Miss J's income and expenses she didn't have the means available to her to sustainably pay the fixed sum loan from Zopa. And as the loan was unaffordable for Miss J and Zopa hadn't conducted reasonable and proportionate checks before providing the loan to her, I'm upholding her complaint.

As Miss J has received benefit from the money she's borrowed, I think it's fair that she remains liable for any remaining amount outstanding. But I'm asking Zopa to refund Miss J the interest and any charges that have been added to the capital amount of the fixed sum loan. In the event that the refunded interest and charges result in a surplus balance falling due to Miss J, then Zopa should also add interest of 8% simple to this figure.

While I appreciate that Zopa is under an obligation to report accurate information to the credit reference agencies about the way a consumer has managed their credit account, that information should also be fair. As I don't think Zopa has acted fairly in deciding to provide this loan to Miss J, then I don't think she should be impacted by that decision by having adverse information on her credit file. So, I'm asking Zopa to remove any negative information recorded on Miss J's credit file in respect of this account.

Putting things right

I'm asking Zopa to do the following:

- To remove all of the interest added to the capital amount of £10,000 together with any charges that have been added to the loan.
- Calculate the total amount of money paid by Miss J towards the loan amount and if this results in Miss J having paid more than the capital amount of £10,000 then any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement).
- If any capital balance remains outstanding, then Zopa should attempt to arrange an affordable and suitable payment plan with Miss J.
- To remove any adverse information recorded on Miss J's credit file relating to this account.

My final decision

For the reasons set out above I'm upholding Miss J's complaint. I'm asking Zopa Bank Limited trading as Zopa to do the following:

- To remove all of the interest added to the capital amount of £10,000 together with any charges that have been added to the loan.
- Calculate the total amount of money paid by Miss J towards the loan amount and if this results in Miss J having paid more than the capital amount of £10,000 then any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). †
- If any capital balance remains outstanding, then Zopa should attempt to arrange an affordable and suitable payment plan with Miss J.
- To remove any adverse information recorded on Miss J's credit file relating to this account.

† HM Revenue & Customs requires Zopa to take off tax from this interest. Zopa must give Miss J 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 Miss J to accept or reject my decision before 26 March 2024.

Jocelyn Griffith
Ombudsman