DRN-4488661

## The complaint

Mr A complains that Zopa Bank Limited ("Zopa") irresponsibly gave him two loans.

## What happened

Mr A successfully applied for a loan of £2,000 with Zopa in January 2022. The terms of the agreement were that Mr A would repay £58.02 over 48 months. He then successfully applied for a further loan with Zopa in August 2022 for £3,000. The terms of that loan were that Mr A would repay £102.91 over 36 months.

Mr A complained to Zopa in September 2023. He said the loans were unaffordable and shouldn't have been approved.

Zopa didn't agree. They said they'd considered several factors including Mr A's credit profile, his credit history, and the affordability of the loans, from information they were given in the loan applications and from credit reference agencies.

Our investigator recommended the complaint should be upheld. He thought Zopa didn't carry out proportionate checks to determine whether the loans were affordable. In respect of the first loan, he felt that Zopa should have got a more thorough understanding about Mr A's circumstances, as he was paying over 50% of his income towards his existing credit commitments. And, had Zopa done this, they would have seen that Mr A's housing costs were higher than he'd declared and that he had other loans that didn't show up in Zopa's credit check. He felt that Zopa would then have seen that Mr A wouldn't have been left with any free disposable income to repay the loan sustainably.

In respect of the second loan, our investigator felt Zopa should have realised that Mr A had an ongoing reliance on credit and that he was becoming increasingly indebted. So, he felt Zopa shouldn't have approved this loan either.

Zopa didn't agree and said they had no need to carry out further checks as our investigator had set out. As the complaint couldn't be resolved, it's been passed to me for a decision.

## 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.

Mr A says Zopa provided him with loans that weren't affordable. So, what I'm essentially considering in this decision is whether Zopa completed reasonable and proportionate checks to satisfy itself that Mr A could repay the borrowing in a sustainable way.

If I consider that Zopa carried out reasonable and proportionate checks, then I need to consider whether they made a fair lending decision. If I don't consider that Zopa carried out these checks, then I need to consider whether reasonable and proportionate checks would have shown that Mr A could sustainably repay the borrowing.

I’ve considered – amongst other things – the rules and guidance for lenders set out in the Consumer Credit Sourcebook (“CONC”) within the Financial Conduct Authority’s handbook. These were the rules and guidelines set in place when Zopa granted Mr A the loans.

Before granting credit, Zopa were required to carry out a reasonable and proportionate assessment of Mr A’s ability to sustainably repay the debts. This is often referred to as an ‘affordability check’. This check had to be borrower-focussed. This means it needed to be concerned with whether Mr A could sustainably afford the borrowing (considering his specific circumstances), rather than how statistically likely he was to repay. The latter is the risk posed to Zopa as the lender, or its ‘credit or lending risk’ but this is not necessarily the same as an assessment of affordability.

What’s considered reasonable and proportionate will vary depending on a number of factors such as, but not limited to:

- The type and amount of credit;
- The total repayable and the size of the regular repayments;
- The duration of the agreement;
- The cost of the credit; and
- The consumer’s individual circumstances.

What this means is that there isn’t a one-size-fits-all approach to what is considered proportionate, as any of these factors (or others) might influence what a reasonable and proportionate check ought to be.

*Loan 1*

Zopa says they validated Mr A’s declared monthly income of just under £2,700 from a credit reference agency and took into account his declared monthly housing cost of £500. Zopa also carried out a credit check, from which they determined that Mr A was paying around £1,420 each month towards his existing credit commitments. From this, Zopa felt Mr A had enough disposable income to repay the loan.

I find that Zopa did a reasonable and proportionate check to establish Mr A’s income. However, Zopa’s credit check showed that Mr A was repaying four existing loans and a hire purchase agreement. It also showed that he had three credit cards, all of which were close to their limits of £2,275, £8,900, and £2,500. And the check showed that Mr A had settled six loans in the previous 12 months.

In my view, this should have prompted Zopa to do further checks to see if the proposed lending was affordable, sustainable and whether Mr A was in danger of becoming over-indebted. The amount of credit that he was utilising and had recently used showed that Mr A may have become over-reliant on credit.

I think Zopa should have completed a thorough check of Mr A’s financial circumstances. Had they done so, they would have discovered that he was paying around £650 to his housing costs rather than the declared figure of £500 he gave. Mr A was also repaying just under £300 each month to a lender that wasn’t shown in the credit check Zopa carried out. This was on top of the £1,429.45 that Zopa identified as being Mr A’s monthly credit commitments.

Had Zopa carried out more appropriate checks, this would have shown that Mr A didn’t have the disposable income that Zopa thought he had. It would have in fact shown them that Mr A had little to no disposable income to sustainably afford the proposed loan. So, as a result, I don't think that Zopa acted fairly in approving the loan.

*Loan 2*

Here, Mr A applied for the loan seven months after the previous loan. By this time, Zopa should have already noticed that Mr A was over-reliant on credit and had little to no disposable income to repay the previous loan.

Zopa's credit check showed that Mr A was repaying six loans, including the first Zopa loan, and had over £5,000 of existing credit card debt. The check also showed that Mr A had settled four previous loans in the previous couple of months (although it's possible he used credit to do so to mitigate the ongoing costs of servicing these debts).

I think Zopa should have questioned why Mr A was returning for more credit so soon after they'd granted the first loan, and when they should have previously realised the extent of his reliance on credit. By this time, Mr A had also taken out two further loans. Had they scrutinised Mr A's financial circumstances appropriately, Zopa would have seen that, not only was he becoming reliant on credit, but he was also spending thousands of pounds each month on foreign trading. I think therefore that more thorough and proportionate checks would have shown Zopa that Mr A was seriously struggling to manage his finances and was using credit repeatedly to his detriment. So, as a result, I don't think that Zopa acted fairly in approving this loan.

**Putting things right**

It isn't possible to completely undo the lending decisions. However, as I think Mr A shouldn't have been given these loans, I think it's fair and reasonable that he shouldn't have to pay any interest and charges (or any costs for borrowing). But, as he received the loan proceeds, it's fair he pays that back. Once Mr A has paid back the capital amounts he borrowed, Zopa should remove any adverse data it has recorded on his credit file in relation to these loans. This is because the adverse markers would only have been applied as a result of being given loans he should never have received.

Zopa needs to add up the total amount of money Mr A received as a result of having been given the loans. The repayments Mr A made should be deducted from this amount.

> a) If this results in Mr A having paid more than they received, any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement).
>
> b) If any capital balance remains outstanding, then Zopa should arrange an affordable and suitable payment plan with Mr A. Once Mr A has cleared the balance, any adverse information Zopa has recorded on his credit file in relation to these loans should be removed.

If Zopa considers tax should be deducted from the interest element of my award it should provide Mr A with a certificate showing how much tax it has taken off, so that he can reclaim that amount, if he is eligible to do so.

**My final decision**

For the reasons set out above, I uphold this complaint and direct Zopa Bank Limited to carry out the steps shown in the 'putting things right' section of my decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr A to accept or reject my decision before 19 April 2024.

Daniel Picken
**Ombudsman**