

## **The complaint**

Miss S complains that Zopa Bank Limited ('Zopa') irresponsibly granted her a fixed sum loan agreement she couldn't afford to repay.

## **What happened**

In November 2021, Miss S took out a loan with Zopa. Under the terms of the fixed sum loan agreement, Miss S was borrowing £9,000 and paying it back by way of 48 payments of £332.05.

Miss S says Zopa didn't complete adequate affordability checks and that she had already taken out a high level of debt elsewhere. So, Zopa ought to have seen the agreement was unlikely to have been affordable.

Zopa didn't agree. It said that it carried out an adequate assessment before approving the loan which included using information provided by a credit reference agency.

Our Investigator reviewed the complaint and upheld it. She considered that Zopa hadn't completed proportionate checks or made a fair lending decision about the loan being affordable.

Zopa didn't agree and said its checks were reasonable and proportionate.

As Zopa has disagreed, the complaint has been passed to me for a final 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.

Zopa will be familiar with all the rules, regulations and good industry practice we consider when looking at a complaint concerning unaffordable and irresponsible lending. So, I don't consider it necessary to set all of this out in this decision.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it, but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When Miss S applied for the agreement, she told Zopa she was earning around £81,000 annually from self-employed income. Zopa used the credit reference agency to verify this. She also said she was paying monthly rent of £1,000. Based on this Zopa calculated that Miss S ought to have had a monthly disposable income of around £2,450.

Zopa also looked at Miss S's credit history. The check didn't show any adverse markings on her credit file, such as arrears, and there was no recent history of defaults or having a county court judgment registered against her. It *did*, however, show that Miss S already had had

some a significant amount of existing credit, at that point totalling around £28,000 by way of loan and credit card debt. So Zopa needed to take this into consideration when making its lending decision.

Miss S was self-employed and receiving a variable level of income each month. Given that this was a relatively substantial loan that would be repayable over four years, I think Zopa should have asked Miss S for more details about her other committed expenditure and daily living costs, in addition to the monthly rent details she provided. Although Zopa completed a credit check, this won't have given any meaningful indication of what these were. So I don't think Zopa's checks can be said to be reasonable and proportionate.

I've also seen that Miss S planned to use the loan funds for debt consolidation purposes. But I agree with our investigator that this would still leave Miss S with a substantial amount of debt, having cleared less than half of her existing debt commitments. And it's notable that her recent borrowing history showed that she had applied for and taken out two loans each of £9,000 and had opened a new credit card, in addition to the two she was already using. So, whilst Miss S may not have been increasing her overall debt burden, she was still committed to a long repayment period with the possibility that she would be able to use the available credit balances again should she consider it necessary.

This suggests very strongly that had it carried out better proportionate checks before making its lending decision, Zopa would have been in a much better position to understand more about Miss S's financial situation. I can't know for sure exactly what Zopa would have found out if it had asked at the time but, in the absence of anything else, I think it's reasonable to place significant weight on the information contained in Miss S's bank statements as to what would most likely have been disclosed.

As I've mentioned, Miss S's monthly income stream was variable, reflecting the fact that she was self-employed. So whilst for some months she might be able to meet her existing credit commitments, during other months she would be financially stretched. I therefore have concerns as to whether the 'on paper' disposable figure relied on by Zopa would be sustainable over a long repayment period.

A further factor is Miss S's heavy reliance on her £4,000 overdraft facility. Whilst the use of an overdraft does not in itself necessarily denote a worsening level of financial difficulty, I consider that the level of usage and reliance Miss S placed on it demonstrates that it was unrealistic to rely on the figure for disposable income without making a more comprehensive enquiry into Miss S's actual financial circumstances.

I therefore agree that the bank statements suggest that Miss S's financial situation was much more volatile and there appears to have been at least one further item of borrowing which didn't appear in the credit report, with payments being made from time to time of variable sums up to £1,400. I am not suggesting that Zopa was wrong to rely on the information set out in the credit check. But I think Miss S's self-employed status and variable income, combined with her high level of existing credit commitments, was more than enough to require that Zopa carry out a more in-depth review of her finances in order to establish that a reasonable and proportionate level of checks had been conducted.

It follows that based on what I've seen, Miss S didn't have enough consistent and disposable income to sustainably afford the new borrowing she was seeking from Zopa. I think Zopa

ought to have done more to look into Miss S's financial situation at the time of the application, especially given her self-employed status and credit history. Had it done so I think it would have seen that Miss S was already getting into financial difficulty and there was a real risk that she would be unable to meet the monthly repayments without experiencing further deterioration in her financial situation. Zopa therefore didn't act fairly by approving the finance.

I've seen that Zopa has already taken steps to accommodate Miss S by agreeing nominal payment arrangements earlier this year. I would urge Zopa to continue to treat Miss S with appropriate forbearance as far as possible with the aim of agreeing a sustainable repayment arrangement.

### **Putting things right – what Zopa needs to do**

Miss S had the use of the funds as a result of this lending. So I think it's fair that she repays the capital amount she borrowed. But Miss S has paid interest on a loan that shouldn't have been brought about. So, as I don't think Zopa ought to have approved the lending, I don't think it's fair for it to be able to charge any interest or charges under the agreement.

Miss S should therefore only have to pay the original loan amount, being £9,000. Anything Miss S has paid in excess of that amount should be refunded as an overpayment.

To settle Miss S's complaint Zopa should therefore do the following:

- Remove all interest, fees and charges applied to the loan from the outset. Any payments made by Miss S should then be deducted from the new starting balance.
  - a. If the payments Miss S has made total more than the amount she was originally lent, then any surplus should be treated as overpayments and refunded to her, together with 8% simple interest\* calculated on any overpayments made, from the date they were paid by Miss S to the date the complaint is settled.
  - b. If after the adjustments have been made there is still a balance to pay Zopa should discuss arranging a suitable/affordable payment arrangement with Miss S
- Remove any adverse information recorded on Miss S's credit file as a result of the loan once any outstanding balance has been repaid.

\*HM Revenue & Customs requires Zopa to take off tax from this interest. Zopa must give Miss S a certificate showing how much tax it's taken off if Miss S asks for one.

### **My final decision**

I uphold this complaint and direct Zopa Bank Limited to put things right as set out above. Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 29 December 2023.

Michael Goldberg  
**Ombudsman**