

The complaint

Miss C says Zopa Bank Limited irresponsibly lent to her.

What happened

Miss C took out a 24-month loan for £15,000 in April 2022. The monthly repayments were £682.67 and the total repayable was £16,383.99. Miss C started to have problems making her repayments in July 2022 and the account defaulted in August 2023.

Miss C says the loan was never affordable, nobody went through her incomings and outgoings. She is now in a debt management plan (DMP) and her credit is ruined. She took out the loan to invest but it was scam. This has impacted her mental health and left her embarrassed and depressed.

Our investigator said the complaint should be upheld. He said Zopa's checks were not proportionate and better checks would have shown Miss C was unlikely to be able to sustainably repay the loan.

Zopa disagreed and asked for an ombudsman's review. It said there were no concerns raised by the credit check, it suggested the loan would be affordable. And the file did not show Miss C had a mortgage.

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 I've followed it here.

The rules and regulations when Zopa lent to Miss C 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 Miss C. 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 Miss C. 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 reasonable and proportionate checks 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 Miss C. So to reach my conclusion I have considered the following questions:

- did Zopa complete reasonable and proportionate checks when assessing Miss C'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 Miss C before it approved the loan. It asked for details of her income, and verified this externally, and employment status. It asked about her residential status. It also checked her credit file to understand her credit history and existing credit commitments. It estimated her living costs using national statistics. It asked about the purpose of the loan, which at the time Miss C said was home improvements. From these checks combined Zopa concluded Miss C had enough monthly disposable income to afford to repay the loan.

I don't think these checks were proportionate in the circumstances of this case. Miss C was applying for a high value loan and the monthly repayments were around a third of her net monthly income. So I think Zopa needed to carry out a fuller financial review to ensure the loan would not cause her financial harm.

In cases like this we look at bank statements for the three months prior to application. I am not saying Zopa had to do exactly this but it is a reliable way for me to understand what better checks would most likely have shown.

Zopa would have learnt Miss C's average net monthly income was £1,887.11, her fixed housing and living costs (not including groceries and transport) were £895.23. And her credit commitments were £289 as she had recently taken out a loan in addition to the credit card Zopa knew about. This meant after taking on this loan she would have just £20.21 disposable income which clearly shows the loan was not affordable. I note Miss C only managed to make the first two repayments successfully.

I would add here that I am unsure why Zopa says its credit check did not show Miss C had a mortgage. The document it submitted to this service clearly shows she had a 30-year mortgage for just under £79,000 with a monthly repayment of £342. This was also evidenced on her bank statements and is included in my calculation of her fixed housing and living costs above.

It follows had Zopa carried out proportionate checks I think it would not, as a responsible lender, have made the same lending decision.

I therefore find Zopa was wrong to give the loan to Miss C. I have not found Zopa acted unfairly or unreasonably in some other way. I am sorry about the impact of the scam and the debt on Miss C's mental health. I hope she now has the support she needs. If not she may find it helpful to contact organisations that help with this type of situation such as StepChange on 0330 055 2198 for debt advice and/or MIND on 0300 123 3393 for support with mental health issues.

Putting things right

I think it's fair and reasonable for Miss C to repay the capital that she borrowed as that was money she received and was able to use. I am sorry she lost that money through an investment scam but that does not mean I think Zopa should write-off the loan balance. She said the loan was for home improvements so I don't find that it missed an opportunity to intervene and prevent the loss. Miss C should contact the bank she moved the funds to the scammer from, if she hasn't already, to see if there are grounds for it to provide a refund or to recover the money.

It is unfair, however, that she has paid interest and charges on a loan that shouldn't have been provided to her.

If Zopa has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If Zopa is not able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

It should:

- Remove all interest, fees and charges from the loan and treat all the payments Miss C made as payments towards the capital.
- If reworking Miss C's loan account results in her having effectively made payments above the original capital borrowed, then Zopa should refund these overpayments with 8% simple interest calculated on the overpayments, from the date the overpayments would have arisen, to the date of settlement*.
- If reworking the account leaves an amount of capital still to be paid, then Zopa should agree the impact on the current repayment plan with Miss C and her DMP administrator.
- Remove any adverse information recorded on Miss C's credit file in relation to the loan once any outstanding capital balance has been repaid.

*HM Revenue & Customs requires Zopa to deduct tax from this interest. Zopa should give Miss C a certificate showing how much tax it's deducted, 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 Miss C'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 Miss C to accept or reject my decision before 15 March 2024.

Rebecca Connelley
Ombudsman