

The complaint

Mr B is complaining about Zopa Bank Limited because he says it lent irresponsibly when providing him with a credit card. He says he had a gambling problem for which he's receiving treatment and he shouldn't have been given access to further credit.

What happened

On 24 October 2023, Mr B applied for a credit card with Zopa. This was approved with a credit limit of £1,200.

Our investigator concluded the complaint should be upheld. He felt Zopa should have carried out further checks to assess whether the credit was affordable for Mr B. If it had done, he felt the information it would likely have discovered would have meant it was inappropriate to approve the card.

Zopa didn't accept the investigator's assessment. It said the application passed its affordability checks and that the amount of credit was low compared to Mr B's declared income. It also said Mr B's previous management of his debt was good.

The complaint has now been referred to me for review.

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.

Having done so, I've reached the same overall conclusions as the investigator, and for broadly the same reasons. If I haven't commented on any specific point, it's because I don't believe it's affected what I think is the right outcome. In considering this complaint I've had regard to the relevant law and regulations; any regulator's rules, guidance and standards, codes of practice, and what I consider was good industry practice at the time.

Before lending to Mr B, Zopa was required to carry out appropriate checks to ensure the repayments were affordable and sustainable. To decide whether this requirement was met, the key questions I need to consider are:

- Did Zopa complete reasonable and proportionate checks to establish that Mr B would be able to repay the credit in a sustainable way?
- If so, was the decision to lend fair and reasonable?
- If not, what would reasonable and proportionate checks have discovered, and would the decision to lend have been fair and reasonable in light of that information?

The rules, regulations and good industry practice in place at the time the credit was approved required Zopa to carry out a proportionate and borrower-focused assessment of whether Mr B could afford the repayments. This assessment also had to consider whether

the credit could be repaid sustainably. In practice this meant Zopa had to satisfy itself that making payments to the credit wouldn't cause undue difficulty or adverse consequences. In other words, it wasn't enough to simply think about the likelihood of him making payments, it had to consider the impact of the repayments on Mr B.

The affordability assessment and associated checks also had to be proportionate to the specific circumstances. What constitutes proportionate checks depends on a number of factors including, but not limited to, the particular circumstances of the consumer (for example their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount, type and cost of the credit being considered. Even for the same customer, a proportionate check could be different for different applications.

In general, I think a reasonable and proportionate assessment should be more thorough:

- the lower the customer's income, reflecting that it could be more difficult to make repayments from a lower level of income;
- the higher the amount due to be repaid, reflecting that it could be more difficult to meet a higher repayment from a particular level of income;
- the longer the term of the credit, reflecting the fact that the total cost is likely to be greater and the customer is required to make payments for an extended period; and
- the greater the instances and frequency of credit, and the longer the period of time during which a customer has been given credit, reflecting the risk that repeated refinancing may signal borrowing has become unsustainable.

There may also be other factors that could influence how detailed a proportionate check should have been for a given application, including any indications of borrower vulnerability or foreseeable changes in future circumstances.

Zopa has described the information it gathered to assess whether Mr B's credit was affordable before it was approved. This included:

- information contained in his application, including residential status, employment status and his income, which was separately verified; and
- information obtained from a credit reference agency (CRA), giving details of his existing credit arrangements and any past issues with credit, including missed payments and defaults.

Zopa maintains its affordability assessment was proportionate to the credit being given and showed it was affordable.

After carefully reviewing the information Zopa obtained, I think there were factors that should have prompted it to carry out further checks before approving Mr B's credit and I don't agree the affordability assessment was reasonable and proportionate in this case.

I accept Mr B's declared income was relatively high and the credit check showed he was up to date with his existing commitments, but I think there were worrying signs in relation to his recent activity that warranted further investigation. In particular, I note that between April and August 2023 Mr B had taken on four additional credit arrangements. This included two loans totalling nearly £10,000 and two credit cards. One of the cards had a limit of £10,000 and he'd already spent most of the way up to this limit.

I can't know exactly what further checks Zopa might have carried out at the time, but I think a consideration of Mr B's actual income and expenditure would have been reasonable. So

we've obtained copies of his bank statements for the three months prior to the lending to establish what information could reasonably have been discovered.

A review of the statements shows Mr B had taken out two more loans totalling £28,000 in the weeks before his application that didn't show up on Zopa's credit check. While some of this money was used to repay other debts, much of it was used for other purposes. The statements also show Mr B was gambling extensively and made payments to an online casino worth over £3,500 in just the two weeks before his application to Zopa.

If Zopa had uncovered details of Mr B's recent borrowing and gambling transactions, it's my view that it shouldn't have lent to him.

In summary, if Zopa had adequately assessed whether the credit repayments were affordable and sustainable, it's my view it shouldn't have lent to Mr B. It's for this reason that that I'm upholding this complaint.

Putting things right

The principal aim of any award I make must be to return Mr B to the position he'd now be in but for the errors or inappropriate actions of Zopa. But that's not entirely possible here as the lending provided can't be undone.

Because I don't think Zopa should have lent to Mr B, I don't think it's fair for him to pay interest or charges on the amount borrowed. But he has had use of the money that was lent, so I think it's fair he repays the amount borrowed (without the addition of interest or charges).

To put things right, Zopa now needs to take the following steps:

- Rework the account to remove all interest, fees, charges and insurances (not already refunded) that have been applied since it was opened.
- If the reworking results in a credit balance, this should be paid to Mr B with the addition of simple interest at 8% per year from the date of each overpayment to the date of settlement.

HM Revenue & Customs (HMRC) requires Zopa to deduct tax from any interest. It must provide Mr B with a certificate showing how much tax has been deducted if he asks for one. If Zopa intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

- Or, if after the reworking there's still an outstanding balance, Zopa should arrange an affordable payment plan with Mr B for the shortfall.
- Remove any adverse information recorded on Mr B's credit file relating to this credit, once any outstanding balance has been repaid.

I'm satisfied this represents a fair and reasonable settlement to this complaint.

My final decision

For the reasons I've explained, I'm upholding Mr B's complaint. Subject to his acceptance, Zopa Bank Limited should now put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or

reject my decision before 1 May 2024.

James Biles
Ombudsman