DRN-4676382

The complaint

Mr S, through his representative, complains that Zopa Bank Limited lent to him irresponsibly.

What happened

In December 2022 Mr S was approved for one loan from Zopa for £3,000, and the total to repay was £3,890.11. The repayments were £126.57 for the first one then £108.06 for a further 35 months.

After Mr S had complained through his representative to Zopa, it sent its final response letter (FRL) in which it gave details as to why it did not uphold his complaint. Mr S' complaint was referred to the Financial Ombudsman in December 2023.

One of our investigators looked at the complaint and thought that Zopa had miscalculated the total cost of Mr S' commitments each month before factoring in the Zopa loan cost and so he thought that Zopa had got it wrong. He issued a view explaining why Zopa should put things right for Mr S.

Zopa disagreed as it considered it had used the information it had from Mr S and from the credit report details correctly. The unresolved complaint was passed to me to decide.

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 have set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

The rules and regulations in place required Zopa to carry out a reasonable and proportionate assessment of Mr S' ability to make the repayments under the loan agreement. This is referred to a '*reasonable creditworthiness assessment'*. A firm must base this on *'sufficient information'*

> *'(1) of which it is aware at the time the creditworthiness assessment is carried out;*
> *(2) obtained, where appropriate, from the customer, and where necessary from a credit reference agency, and*

the information must enable the firm to carry out a reasonable creditworthiness assessment.' – Consumer Credit Sourcebook (CONC) rule 5.2A.7.

CONC contains rules and guidance in relation to the factors that should be taken into account when deciding how much information is sufficient for the purposes of the creditworthiness assessment, what information it is appropriate and proportionate to obtain and assess, and whether and how the accuracy of the information should be verified.

Zopa had to think about whether repaying the loan would be sustainable. In practice this meant that Zopa had to ensure that making the repayments on the loan wouldn't cause Mr S undue difficulty or significant adverse consequences. That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payments he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for Zopa to approach the loan application from the perspective of the likelihood of getting its money back. Zopa had to consider the impact of the loan repayments on Mr S. Checks also had to be *'proportionate'* to the specific circumstances of the loan application.

In general, what constitutes 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/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that a reasonable and proportionate check ought generally to have been more thorough:

- the lower a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount 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 greater the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr S's complaint. Having looked at everything I have decided to conclude the affordability checks were flawed in that the income and expenditure calculations were incorrect.

Mr S was not likely able to afford this loan and certainly not over 36 months without borrowing again to cover the cost. I uphold his complaint and I explain why here.

Mr S had declared that he was a homeowner with a mortgage and earned £2,295 a month (after tax) working full time.

Zopa had explained to us that it used Office of National Statistics (ONS) figures to determine a figure for Mr S' monthly expenditure costs. The figure it used was £725.

It seems that Mr S had two mortgages or certainly two accounts which were secured on assets: one with a £258,000 balance and the other with a £45,000 balance. These were costing Mr S £880 and £269 each month respectively and that would have been a total of £1,149 each month. Zopa's records seems to have inputted into its 'Income and Expenditure' calculations a figure of half of one of these scheduled payments – around £444.

I can see that Zopa had done a credit check which had included Mr S' financial associates and it seems these two larger secured loans were joint accounts with another person who may have been Mr S' wife.

However, there's no information or evidence to suggest that Mr S' wife was contributing to those costs. And there's no evidence I've seen which suggests that Zopa checked even to see if Mr S' wife was working. So, I don't consider using the £444 was correct. And in any event Zopa appears not to have included the secured loan cost of £269 each month.

So, I've calculated that the income to pay for these credit commitments and household costs was from Mr S' income.

And I don't consider that I need to check about whether Mrs S earned a salary or whether she contributed to the two secured loan costs, as on the evidence and submissions Zopa has supplied to us, I can see that Zopa did not do that which I consider a mistake. If Zopa halved the credit commitment costs because Mr S shared the accounts with another, then it ought to have checked these details as the difference to the 'Income and Expenditure' calculation was substantial. I do not think that it did that.

In addition, Mr S had a loan costing him £71 a month, the loan was taken out in 2021. He had two credit cards with a total outstanding balance of just under £7,500. This was made up of just under £5,000 on one card account which was up to its limit, plus £2,486 balance on a card credit limit of £6,800.

Whether I use the minimum repayment for credit card calculation of 3% or 5% on that £7,500 outstanding figure, it leads me to monthly potential repays of £224 or £373. And these minimum repayments would not be enough to reduce the capital amounts by very much each month.

So, simple calculations show me that Mr S was repaying two secured asset repayments of £1,149 plus £71 plus the £725 payment towards his general costs which was the figure Zopa has explained to us it used, then he'd have £350 a month left over.

Accounting for the payment towards his credit cards which would only be the minimum repayments, regardless of whether I choose £224 or £373 as the monthly cost, it means Mr S was not able to pay down his cards and afford these loan repayments of £108 each month.

And even if the £3,000 loan had been used to pay off the smaller balance on one of the credit cards, still I do not think that Mr S was able to sustainably repay this loan for 36 months. Or, even if he could, I think that the balance left over would have been so small it gave Mr S absolutely no margin to absorb the costs which can arise unexpectedly when running a household and family especially considering the term of the loan.

I uphold Mr S' complaint.

Putting things right

Mr S' loan is still within its 36 month term. I am conscious that Mr S has said he cannot afford it. So, I direct that Zopa does as follows:

- Remove all interest, fees and charges applied to the loan and treat any payments made by Mr S as payments towards the capital amount of £3,000,
- If Mr S has paid more than the capital then any overpayments should be refunded to him with 8%* simple interest from the date they were paid to the date of settlement,
- But if there's still an outstanding balance, Zopa should come to a reasonable repayment plan with Mr S.
- Remove any adverse information about the loan from Mr S' credit file.

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

My final decision

My final decision is that I uphold the complaint and I direct that Zopa Bank Limited does as I have directed in the 'putting things right' part of the decision.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr S to accept or reject my decision before 5 June 2024.

Rachael Williams
Ombudsman