DRN-4823891

The complaint

Mr M has complained that Zopa Bank Limited ("Zopa") irresponsibly provided a loan to him which he couldn't afford to repay.

What happened

Zopa advanced Mr M a 36-month loan of £9,500 on 1 August 2019. The monthly repayments were £312.48 and the total repayable was £11,249.28. Mr M has had some difficulties repaying the loan, an outstanding balance remains due and the loan account has now been defaulted.

Following Mr M's complaint Zopa wrote to him and explained it wasn't going to be upholding it because the checks it conducted at the time showed the loan repayments to be affordable. Unhappy with this response, Mr M referred the complaint to the Financial Ombudsman.

An investigator, in her latest assessment upheld Mr M's complaint about the sale of the loan because she said Zopa hadn't fully considered the information it received from the credit reference agency as part of its affordability check.

The investigator could see from the credit check results given to Zopa that his mortgage was greater than the £1,200 it had calculated. That along with the high portion of his income needed to be used in order to service his existing debt along with the Zopa loan repayment left very little each month to pay associated costs which led the investigator to uphold the complaint.

Zopa didn't agree saying the loan was "*auto-approved*" and therefore based on the information provided by Mr M as well as the results of credit checks the loan was affordable and so, there was no need to carry out additional checks. It would also be unreasonable to expect Zopa to request additional checks on all applications. As no agreement could be reached the complaint has been 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've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I've used this approach to help me decide Mr M's complaint. Having carefully considered everything I've decided to uphold Mr M's complaint. I'll explain why in a little more detail.

Zopa needed to make sure it didn't lend irresponsibly. In practice, what this means it needed to carry out proportionate checks to be able to understand whether Mr M could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender's checks were proportionate. Generally, we think it's reasonable for checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to do be done if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a firm to be able to show that it didn't continue to facilitate a customer's loans irresponsibly.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr M's complaint. Having looked at everything I have decided to uphold Mr M's complaint and I've explained why below.

Mr M, as part of the online application declared an annual salary of £60,000 which Zopa worked out to be £3,611.25 each month after tax. Zopa says Mr M's income figure was verified through a credit reference agency – meaning that the credit reference agency was given information which suggested Mr M's monthly income was likely to be accurate.

It doesn't appear that Zopa asked Mr M for any details of his day to day living costs. Zopa, has explained that taking account of the credit commitments it saw in the credit check (which I come on to below) as well as his mortgage payment (£1,200) and taking account of his Zopa loan payment Mr M was left with around £573 per month. Zopa therefore concluded the loan was affordable.

Zopa, as part of its affordability assessment carried out a credit search and it has provided the results it received from the credit reference agency and Zopa needed to consider the results it was given.

Zopa says the credit check results showed that Mr M had 4 active credit accounts (1 credit card, 2 loans and a current account). Given the information Zopa received it worked out that Mr M's total payments towards his credit commitments came to around £1,525 each month on around £29,000 of total unsecured debt.

Zopa went onto explain that there were no adverse payment markers recorded against the active accounts which led it to conclude the loan was affordable and further checks weren't needed.

However, as the investigator pointed out, the credit check results showed that Mr M's mortgage payments was significantly more than the £1,200 per month it had calculated. Indeed, Zopa's own credit checks suggests that Mr M's total mortgage repayment was more than £2,300 per month and it isn't clear why this increased figure wasn't used as part of its affordability assessment or whether any further enquiries were made with Mr M about this figure.

Indeed, if the figure from the credit report was used, along with the existing credit commitments Zopa was aware of, then Mr M would not have had any money left over with which to make his loan repayment.

But even Zopa had halved the mortgage as there was another party helping with the repayment – which I can't be sure because this isn't reflected in the credit file data it received. Or if those other mortgages were perhaps by-to-let and to be clear this argument hasn't been made by Zopa, it still doesn't make any difference to the outcome that I've reached.

I also think it's important for me to set out that Zopa was required to establish whether Mr M could sustainably make his loan repayments – not just whether the loan payments were pounds and pence affordable. Here, Zopa was already on notice that Mr M was spending a significant amount each month on his existing credit commitments – it was close to half of his income, and this was even before his mortgage and loan repayments were considered. In those circumstances there was already a real risk that the loan repayments would be unsustainable for Mr M.

Finally, as I've already explained above, using the figures that Zopa used when it conducted Mr M's affordability assessment, after the mortgage, existing credit commitments and the loan repayment he was left with £573 each month. This payment needed to be used to cover all of Mr M's living costs include food, transport and of course the costs associated with having a property such as council tax, utilities, and insurance – costs that as far as I can see Zopa didn't know about. I really don't think, given the costs that needed to come out of the disposable income that Zopa could've been confident that Mr M would be able to afford this loan.

Taking account of the information Zopa collected as part of its affordability assessment, these showed that Mr M would be unlikely to be able to afford his loan repayments.

It therefore follows that Mr M is currently expected to pay interest, fees and charges on a loan that he shouldn't have had. So, I'm satisfied that Mr M has lost out and Zopa should put things right for him as set out below. In effect, Mr M's loan becomes interest free.

Putting things right

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 can't buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

- Zopa should remove all interest, fees and charges from the balance on the loan and treat any repayments made by Mr M as though they had been repayments of the principal. If this results in Mr M having made overpayments then it should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.
- If an outstanding balance is still owed, then Zopa should work with Mr M to repay what is owed and I would remind it of its obligation to treat Mr M fairly and with forbearance.
- Zopa should remove any adverse information recorded on Mr M's credit file in relation to the loan once it has been settled.

*HM Revenue & Customs requires Zopa to deduct tax from this interest. Zopa should give Mr M a certificate showing how much tax it has deducted, if he asks for one.

My final decision

For the reasons given above, I uphold Mr M's complaint.

Zopa Bank Limited should put things right for Mr M as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 June 2024.

Robert Walker

Ombudsman