

The complaint

Mrs O has complained that Zopa Bank Limited ("Zopa") irresponsibly provided two loans to her because they weren't affordable. Mrs O also says she had problems repaying loan 1 and so loan 2 ought not to have been granted.

What happened

A summary of Mrs O's borrowing can be found in the table below.

loan number	loan amount	total to repay	APR	agreement date	number of monthly instalments	highest repayment per loan
1	£5,500.00	£7,183.65	11.60%	20/01/2021	60	£119.73
2	£1,200.00	£1,601.63	21.70%	31/07/2021	36	£44.49

With both loans running concurrently, Mrs O was due to pay Zopa £164.22 per month. Both loans are outstanding.

Zopa didn't uphold Mrs O's complaint and unhappy with this response, Mrs O referred the complaint to the Financial Ombudsman.

An Investigator reviewed the complaint and didn't uphold it. She said the checks Zopa carried out were proportionate which showed she could afford the repayments. And while Zopa's records show a returned payment in July 2021, she didn't think that was sufficient for it to not have lent loan two.

Mrs O didn't agree and asked for a decision saying it didn't take account of her outgoings and she was reliant on other forms of credit which impacted her ability to afford the loans.

As no agreement could be reached the complaint was passed to me and I issued a provisional decision explaining why I intended to uphold Mrs O's complaint about loan 2 only. Both parties were asked to provide any further submissions as soon as possible but no later than 10 July 2024.

Mrs O didn't have any further submissions she wished to make. Zopa didn't agree with the provisional findings, and I've summarised its response below.

- The checks showed there was enough disposable income.
- Mrs O's other credit had been managed well.
- Zopa has explained that while the June 2021 payment was late, it would've only been categorised as missed if Mrs O hadn't paid it by 28 June 2021.
- After July 2021, Mrs O's payment date was changed.
- There were no concerns to suggest Zopa needed to carry out further checks before lending loan 2.

A copy of the provisional findings follows this in smaller font and forms part of this final decision.

What I said in my provisional decision:

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 Mrs O's complaint. Having carefully considered everything I've decided to uphold Mrs O's complaint in part. 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 Mrs O 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 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 the arguments, evidence and information provided in this context and what this all means for Mrs O's complaint.

Loan 1

As part of the online application declared an annual salary of just under £38,000 which Zopa worked out to be £2,441.71 each month after tax. Zopa says Mrs O's income figure was verified through a credit reference agency. This meant the credit reference agency was given information and it responded and suggested Mrs O's monthly income was likely to be accurate. For a first loan, that was a reasonable check.

It doesn't appear that Zopa asked Mrs O for any details of her day to day living costs. However, Zopa explained that taking account of the credit commitments it saw in the credit check where it believed her existing credit commitments came to £970 per month. This was her payments towards a personal loan, 3 credit cards and a current account. Along with her mortgage payment of £312 left just over £1,000 in disposable income for Mrs O to afford her living costs.

The amount left over for living costs was more than the benchmark set by the Office of National Statistics, so Zopa therefore concluded the loan was affordable. I don't think that was an unreasonable assessment.

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 knew there was no recent adverse payment markers recorded against the active accounts and the most recent account had been opened around a year before the loan. So, there were no indicators that Mrs O was or had become reliant on credit.

Overall, for a first loan, where Zopa checked Mrs O's income as well as the information

contained within the credit report than I have concluded a proportionate check was conducted and these checks indicated the loan was affordable.

Loan 2

Zopa carried out the same checks before this loan was approved as it had done for loan 1. Mrs O declared the same income and again this was verified using a tool provided by the credit reference agency.

Zopa, using the details from the credit check worked out that Mrs O's credit commitments were now £1,331 per month, this with her share of the mortgage of £312 plus the new loan 2 repayment of around £45. This all indicated to Zopa that Mrs O had sufficient funds to afford the repayment.

However, Zopa's statement of account shows that Mrs O had problems repaying her first loan. The statement of account shows the payment due on 20 July 2021 had been returned as unpaid and another attempt to make the payment through the direct debit also failed on 27 July 2021.

Mrs O brought the account up to date with a payment on 29 July 2021. The dates used here are ones taken from Mrs O's bank statements, but Zopa's account shows the payment being credited to the account on 28 July. I think at the very least, Zopa was on notice that it took 3 attempts to make the July 2021 payment.

In addition, to the missed July payment, Mrs O had told us that she had missed other contracted payments due for loan 1 but the statement of account provided by Zopa only showed difficulties with the July 2021 payment.

However, despite what the statement of account showed, given what Mrs O had said, I reviewed her bank statements. And to be clear I did this, not to look at the affordability of the loan, but to see whether there had been any further returned payments. The bank statements showed the direct debit payment due to Zopa on 20 June 2021 was also returned as unpaid and was then corrected by 28 June 2021.

It isn't clear why the late payment in June 2021 payment isn't showing on the Zopa statement of account, when the bank statements (from the account used to make the monthly repayment) show both June and July payments being returned due to insufficient funds.

While I accept that Mrs O had brought the account up to date, it does raise questions not only as to why the statement of account only shows one late payment. But it does call into question Mrs O ability to afford to take on further borrowing when she appeared to be having recent difficulties in repaying her first loan.

As I said, Zopa carried out a credit search and it has provided the results it received. For loan 2, it knew that Mrs O now had around £11,000 more debt when she applied for loan 2 compared to what she had when loan 1 was granted. This time it knew she had a current account, a mail order account, 4 credit cards and 3 loans (one of which was loan 1).

But the results showed since loan 1 had been granted, Mrs O had taken a credit card that was almost at the credit limit, another bank loan of around £9,000, what is likely a high-cost credit loan owing £1,500 and finally a mail order account, which was close to the limit as well.

It did seem, at least superficially, that these new credit accounts were being well maintained, in as much as there was no adverse payment information recorded against them. I have thought about whether given the circumstances Zopa ought to have perhaps carried out further checks into Mrs O's finances.

I've carefully considered this, but in the circumstances of this complaint, I think the

information Zopa gathered from Mrs O indicated that she was already having financial difficulties and so it ought to not have lent the second loan.

I do have to question the amount of new credit that had recently been opened. Miss O was also coming back to Zopa six months after the first loan for further borrowing after having difficulties repaying loan 1. Taken these factors into account, I can't agree that any further borrowing was fair or sustainable. And I'm therefore intending to uphold loan 2.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I will be directing below, results in fair compensation for Mrs O in the circumstances of her complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

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.

This section should be read in conjunction with the provisional findings outlined above and Zopa hasn't provided any new comments that I hadn't already thought about or addressed in the provisional decision. But for completeness I've gone into more detail below.

Neither party has provided any further submissions around loan 1, so I won't be revisiting that loan here in any detail. I'm still satisfied, based on proportionate checks which Zopa did, the loan appeared affordable. I am not upholding Mrs O's complaint about the first loan.

Having thought about Zopa's further comments in response to the provisional decision, I am still minded to conclude that it ought to not have granted the second loan. Especially, in light of the requirement for Zopa to have checked to make sure the loan was not just 'pounds and pence' affordable but was also sustainable for Mrs O. Given what I've seen I don't think this was the case.

While, Zopa's checks may have shown it that the loan was affordable, I don't think taking account of the way loan 1 had been repaid and what Zopa's credit checks showed that the loan was sustainable for Mrs O.

I say this because while Zopa may have only recorded payments as being late if they were received after 28 day of the month. It is clear from Mrs O's bank statements and the statement of account that she had made her contracted payment for both June 2021 and July 2021 later than Zopa expected. While these may not have been recorded as 'late' payments, the fact she hadn't paid in line with the credit agreement was an indicator that perhaps she was having wider financial problems.

Mrs O has explained that she was reliant on forms of credit, and I think that is supported by the results Zopa received when it carried out the credit search before loan 2. It knew that Mrs O's monthly credit commitment had increased by around £400 per month since the first loan.

Indeed, the credit search results also showed that Mrs O had taken over £10,000 of new money from two loan providers one in each of March 2021 and April 2021. She had also taken a new mail order account and a credit card – both of which were close to their respective limits. So, in actual fact, Mrs O had taken on and accessed nearly £12,000 of new credit since the first loan, and was now coming back for a further credit. And while the credit may have appeared to have been well maintained the fact she was continuing to apply for new credit may have been a sign she was having difficulties.

As I explained in the provisional decision, sometimes the information received as part of the application ought to have prompted further checks. Whereas other times I think it's perfectly fair and reasonable to draw the conclusion that Mrs O was seeking new credit fairly soon after taking out new loans, a credit card and mail order whilst still having the first loan outstanding. In those circumstances, given the recent increase in credit and apparent issues repaying loan 1, – I do think any further borrowing wasn't likely to be sustainable for Mrs O. Therefore, still I am upholding her complaint about loan 2.

I was persuaded there was sufficient evidence in the information Zopa received to have made it conclude that the loan was unsustainable and so Zopa didn't need to review bank statements. But even if Zopa had reviewed the bank statements which I have seen – these match the details of the account given to Zopa by Mrs O as part of her application then it also would've concluded the loan wasn't affordable.

It's worth saying here that it appears that this is a joint account as I can see Mrs O's salary being credited but then also child benefit and regular payments from another source. But no money is being transferred out to other accounts, so if it was a joint account it was used to cover all of the household bills – and I can see the mortgage payment as well as other payments for utilities.

But even if Zopa had felt the need to review her bank statements, which Mrs O has provided, it would've likely discovered that there were multiple returned direct debits in the months leading up to loan 2 being advanced. In July 2021, there were 5 such returned payments and there were a further 2 in each of May 2021 and June 2021. While the returned payments were then made up – the fact that the bank statements show Mrs O's account was regularly failing to meet existing credit commitments as and when they became due means it's unlikely, she was able to take on further loans.

So, although I don't think it was needed to be able to uphold this complaint, had Zopa felt further checks were needed, it would've likely concluded that Mrs O didn't have sufficient funds to take on any further borrowing.

I've therefore set out below what Zopa needs to do in order to put things right for Mrs O.

Putting things right

It therefore follows that Mrs O is currently expected to pay interest, fees and charges on a loan that she shouldn't have had. So, I'm satisfied that Mrs O has lost out and Zopa should put things right for her as set out below. In effect, Mrs O's final loan becomes interest free. Zopa shouldn't have advanced loan 2.

- Zopa should remove all interest, fees and charges from the balance on loan 2 and treat any repayments made by Mrs O as though they had been repayments of the principal. If this results in Mrs O 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 Mrs O to repay what is owed and I would remind it of its obligation to treat Mrs O fairly and with forbearance – if necessary.
- Zopa should remove any adverse information recorded on Mrs O's credit file in relation to the loan.

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

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mrs O's complaint in part.

Zopa Bank Limited should put things right for Mrs O as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O to accept or reject my decision before 15 August 2024.

Robert Walker
Ombudsman