

The complaint

Mr W complains that Zopa Bank Limited lent to him in an irresponsible manner.

What happened

I issued a provisional decision on this complaint in July 2024. In that decision I explained why I didn't think the complaint should be upheld. Both parties have received a copy of the provisional decision but, for completeness, I include some extracts from it below. In my decision I said;

Mr W applied for, and was granted, a credit card by Zopa in February 2022. He was given an initial credit limit of £4,000 that remained unchanged over the life of the card. I understand that more recently Mr W has faced some problems meeting his contractual repayments on the credit card account.

Mr W complained that Zopa had lent to him irresponsibly. Zopa disagreed with the complaint – it said that it had based its lending decision on the information provided by Mr W's application, and on information provided by various credit reference agencies. It said that it didn't think it had lent irresponsibly. Unhappy with that response Mr W brought his complaint to us.

We've set out our approach to unaffordable/irresponsible lending complaints on our website and I've kept this in mind while deciding Mr W's complaint.

The rules and regulations at the time Zopa gave this credit card to Mr W required it to carry out a reasonable and proportionate assessment of whether he could afford to repay what he owed in a sustainable manner. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so Zopa had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Mr W. In practice this meant that Zopa had to ensure that making the repayments wouldn't cause Mr W undue difficulty or adverse consequences. 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 any repayments on Mr W.

Checks also had to be "proportionate" to the specific circumstances of the card 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.

In light of this, I think that a reasonable and proportionate check 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 Mr W.

Zopa gathered some information from Mr W before it agreed the loan. It asked him for details of his income, and his normal housing costs. And it checked his credit file to assess how much he was repaying to other creditors and how he had managed credit in the past.

I don't think the checks Zopa did were sufficient. It had no information about Mr W's normal living costs, other than what he was paying on housing. And, if he used the whole of the credit limit he'd been given, he would need to be repaying around £200 each month to Zopa. So I think it would have been proportionate for Zopa to hold some additional information to support the lending decision that it made.

But although I don't think the checks Zopa did before opening the card account were sufficient, that in itself doesn't mean that Mr W's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks – as I've described above – would have shown Zopa that Mr W couldn't sustainably afford the repayments he'd need to make. So I've looked at Mr W's bank statements, and what he's told us about his financial situation, to see what better checks would have shown Zopa.

I think at this stage it is important to say that I don't think it would have been proportionate for Zopa to independently verify what was going on with Mr W's finances. So it wouldn't have seen much of the information shown on the bank statements. Instead, I have looked at those statements to see whether they show any unusual or excessive living costs that Mr W might have declared to Zopa if he'd been asked.

I've not seen any unusual living costs on the bank statements, or evidence of other routine financial pressures such as excessive spending or heavy overdraft usage. So I don't think the additional checks Zopa should have done would have led it to change its conclusion that Mr W could afford the repayments that he needed to make each month.

As I said earlier, Zopa used information from a credit check as part of its approval process. The results that Zopa received showed that Mr W only had two active credit accounts – his mortgage and another credit card on which he owed £1,920. The credit check didn't show any evidence that Mr W had struggled to repay any credit in the past.

But Zopa's results didn't show the actual position that Mr W was in. The month before he asked for the credit card he had taken two large loans – for £10,000 and for £15,000. Given the recent nature of that borrowing those loans were not yet reported on the credit check results that Zopa received.

I don't think it is reasonable to expect Zopa to take account of information that wasn't shown on its credit check. And I note that Mr W also didn't tell Zopa that he'd recently taken two large loans and that his finances were under serious pressure. I have little doubt that, had those two loans been reported to Zopa, I would find that the credit card application shouldn't have been approved. But the information Zopa reasonably held, or would have held had it done the checks I've set out earlier, didn't give any indication that Mr W might struggle to meet his contractual repayments.

I understand how disappointing these findings will be for Mr W. It is clear that his finances were under significant pressure when he applied to Zopa for the credit card. And his subsequent failures to meet the contractual repayments simply underline that fact. But the information Zopa held, or even should reasonably have held, at the time of its lending decision didn't show those financial problems. So I don't currently think Zopa was wrong to give the credit card to Mr W.

For completeness I've also considered whether Zopa acted unfairly or unreasonably in some other way given what Mr W has complained about, including whether its relationship with him might have been viewed as unfair by a court under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't currently think Zopa lent irresponsibly to Mr W or otherwise treated him unfairly in relation to this matter. And I haven't seen anything to suggest that s.140A would, given the facts of this complaint, lead to a different outcome here.

I invited both parties to provide us with any further comments or evidence in response to my provisional decision. Zopa has said it has nothing more to add. Mr W has provided some additional information. Although I am only summarising here what Mr W has said I want to reassure him that I have read, and carefully considered, his entire response.

Mr W says that he had taken two additional high sum loans out a few months before that he says should have shown on his credit report. And he says that one of the two loans he took the month before was actually provided by Zopa. Whilst he accepts the lender might not have been aware of the other loan given its proximity to his credit card application, he says that Zopa should have been aware of the loan it gave.

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.

As I set out in my provisional decision, in deciding this complaint I've taken into account the law, any relevant regulatory rules and good industry practice at the time. I have also carefully considered the submissions that have been made by Mr W and by Zopa. Where the evidence is unclear, or there are conflicts, I have made my decision based on the balance of probabilities. In other words I have looked at what evidence we do have, and the surrounding circumstances, to help me decide what I think is more likely to, or should, have happened.

And I repeat my reflections on the role of this service. This service isn't intended to regulate or punish businesses for their conduct – that is the role of the Financial Conduct Authority. Instead this service looks to resolve individual complaints between a consumer and a business. Should we decide that something has gone wrong we would ask the business to put things right by placing the consumer, as far as is possible, in the position they would have been if the problem hadn't occurred.

I've thought carefully about the additional information Mr W has provided. Although it doesn't change my overall conclusions that it was reasonable for Zopa to provide the credit card, I would like to make some further comments on what he has said.

First I would like to apologise for an error in my provisional decision. I incorrectly stated the credit card had been provided in February 2022, when it was actually taken in May. But I can confirm the remainder of my findings remain accurate – I simply transcribed the wrong date when completing my provisional decision.

The large loan that Mr W says he took earlier in the year was shown on the credit check results that Zopa received. But that loan was fully repaid just a couple of months after it had been taken, and around two months before Mr W applied for the credit card. Whilst repaying a loan within two months, that had been taken over five years, was not entirely normal behaviour I don't think it should have caused any undue concerns to Zopa.

The two loans that Mr W took in April 2022, when considered together, might have caused some concerns to Zopa. I entirely accept Mr W's comments that Zopa should have been aware of one of the loans since it was the lender. But without the additional information about the second loan, that Mr W accepts Zopa wouldn't have known about, I don't think his borrowing might be considered of concern. And even taking the additional repayments into account I don't think that proportionate checks would mean Zopa should have been concerned that Mr W might find it difficult to meet his credit repayment obligations in a sustainable manner.

So I remain of the opinion that Zopa wasn't wrong to give this credit card to Mr W. The pressures on his finances were not something that would have been apparent from proportionate checks – or the information that Mr W himself provided as part of his application. So I don't think the complaint should be upheld.

My final decision

For the reasons given above, I don't uphold the complaint or make any award against Zopa Bank Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 9 October 2024.

Paul Reilly
Ombudsman