DRN-5434953

The complaint

In summary, Mr D complains that Zopa Bank Limited, shouldn't have provided him with a loan in 2017 that was unaffordable for him. In bringing his complaint, Mr D is represented by a business that I will refer to as S.

What happened

In January 2017 Zopa provided Mr D with a loan in the sum of £10,000. The term of the loan was 60 months, with a monthly repayment of £277.95, with an interest rate of 24.7%. The application data recorded that Mr D had net monthly income of £1,793. His existing monthly credit repayments was recorded as being approximately £614. His declared mortgage was £500 a month and it calculated his disposable income as being £1,150 a month. It said it didn't complete a full income and expenditure assessment. Zopa also provided a credit report.

In December 2023, S complained to Zopa about this loan and another loan taken out in 2014. Zopa replied and said it didn't think the decision to approve the loan taken out in 2017, had been made irresponsibly.

One of our investigators looked into the complaint. They explained why they thought the checks carried out by Zopa were reasonable and proportionate, and why it had made a fair lending decision.

In response, S explained whilst it accepted the assessment in respect of the loan taken out in 2014, it didn't agree with the assessment in respect of the 2017 loan. It questioned whether Mr D's income and expenditure had been checked. And it didn't think other expenditure shown on his bank statements had been considered. Also, it didn't think the calculated amount of disposable income was sufficient for the loan to be affordable for Mr D. The investigator wrote to Zopa and asked if the loans were consolidated. They also asked how Mr D's income was verified and referred to the debt-to-income ratio, which they thought warranted further checks. In response, Zopa said the loan reason was to consolidate existing debts. It thought the debt-to-income ratio was within acceptable limits. It also said Mr D's income was checked using a credit reference agency. And it explained how it calculated Mr D's disposable income.

The investigator then wrote to S. They explained why they hadn't been persuaded to change their opinion that the 2017 loan had been affordable for Mr D. S didn't agree with what the investigator said, so the case has been passed to me to review.

Having reviewed the case I asked the investigator to ask Zopa which business was responsible for each of the loans complained about. It said it was responsible for the loan taken out in 2017 and another company was responsible for the loan taken out in 2014.
I issued a provisional decision explaining why I didn't think Mr D's complaint should be upheld. In response, Zopa said it noted the contents and had nothing further to add.
S replied and explained why it thought the complaint should be upheld. It provided an income and expenditure assessment (I&E), that it had carried out. And it said that having

reviewed Mr D’s bank statements it didn’t think the loan was affordable. It also asked for evidence of the unsecured debts I had referred to in my decision. I provided it with a copy of Mr D’s credit report Zopa had obtained at the time of the application, which showed the breakdown of the unsecured debt. I said that the recorded purpose of the loan was for debt consolidation.

I issued another provisional decision in response to what S had said. I explained why I remained of the opinion that the complaint shouldn’t be upheld. It responded querying what was different from its attached I&E assessment from mine, and why the Zopa loan costs had been removed from the expenditure cost.

I replied and explained the I&E assessment I referred to was the one S had provided. I had explained in my decision, that if the remaining balance on the Zopa loan from 2014 had been paid off using the proceeds from the 2017 loan, as was intended in the same way other unsecured debts were paid off, then that monthly repayment of £188.41 wouldn't have continued to have been paid. Mr D chose not to repay that 2014 loan with the proceeds from the 2017 loan. I said that unless S had any new submissions to make, I would proceed to issue my final decision. I asked S to let me know if there was anything it wanted to add.

It responded and said that its credit report didn’t show that, and the 2014 loan didn’t end until April 2018. I responded and said that I would consider what it had said and issue my decision shortly.

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.

Before I set out my current thinking regarding this complaint, I want to reiterate why I am now considering Mr D’s concerns about the two loans he complained about as separate complaints. This is because Zopa has confirmed that another business that it is associated with, is responsible for the loan provided to Mr D in 2014. Zopa has said that it is happy for the complaints about both loans to be considered together. But I can’t consider complaints about different businesses within the same complaint. I have therefore decided that the concerns S has raised on Mr D’s behalf, need to be considered as separate complaints. So, I am reviewing the 2017 loan in this case.

We’ve set out our approach to considering unaffordable and irresponsible lending complaints on our website - including the key relevant rules, guidance, good industry practice and law. And I’ve considered this approach when deciding Mr D’s complaint.

Having done so, I’ve still decided not to uphold Mr D’s complaint. I’ll explain why.

There are several questions that I’ve thought about when deciding if Zopa treated Mr D fairly and reasonably when it provided him with the loan.

1) Did Zopa complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay his loan in a sustainable way?
2) If Zopa didn’t complete reasonable and proportionate checks, what would reasonable and proportionate checks have shown at the time?
3) Ultimately, did Zopa make a fair lending decision?
4) Did Zopa act unfairly or unreasonably in some other way?

Did Zopa complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay his loan in a sustainable way?

The rules that Zopa had to follow, required it to carry out checks that would enable it to reasonably assess, whether Mr D could afford to repay the loan he wanted to take out. This is often referred to as an "*affordability assessment*".

The rules don't set out what specific checks Zopa needed to carry out, but it did set out that those checks needed to be proportionate to the circumstances of the application. I think what this meant in practice, was that the scope and extent of Zopa's checks needed to reflect the nature of the lending, bearing in mind things such as the amount of credit, the interest rate, and any indications of customer vulnerability. This isn't an exhaustive list.

The checks Zopa needed to carry out as part of its affordability assessment, had to be "borrower focussed". What I mean by this, is that the checks needed to consider whether the credit provided, and the monthly repayments, would cause Mr D any difficulties or have any adverse consequences for him.

And as a result of the above, I think reasonable and proportionate checks needed to be more thorough if Mr D had a low income. This would reflect that it could be more difficult for him to make the card repayments with a low income. It would also need to be more thorough the higher the amounts he had to repay, as it would be more difficult to make higher monthly repayments on a given income.

With these principles in mind, I've thought about whether Zopa completed reasonable and proportionate checks to satisfy itself that Mr D would be able to repay his loan in a sustainable way.

In summary then, the circumstances of the loan application were as follows:

- Mr D was applying for a loan for the purpose of consolidating other debt, which had an initial APR of 24.7%.
- Mr D was recorded by Zopa as having a gross annual income of approximately £27,000 when the loan was taken out.
- Mr D was offered a loan of £10,000.
- The credit report obtained by Zopa in respect of Mr D as part of its underwriting process, showed no evidence of accounts in arrears. It recorded total unsecured credit balances of £9,687, with monthly repayments totalling £614 a month.

I accept that the credit report Zopa obtained doesn't show any adverse data, such as defaults or missed payments. And it appears Mr D was maintaining the existing payments on the other loan he's complained about. But I do have some concerns about the checks that Zopa carried out in respect of this loan. I'll explain why.

Mr D's monthly income was recorded as £1,793.93. His existing repayments to his unsecured credit amounted to £614 a month. And his mortgage was declared as £500 a month. So, 62% of Mr D's net income was used to meet repayment of secured and unsecured debt. I think that was a significant proportion of his income that was being used for debt repayment.

I'm also concerned that the affordability assessment carried out by Zopa didn't make any allowance for other essential expenditure. So, it doesn't seem to me that Zopa had a clear picture of Mr D's financial circumstances. The loan it was considering providing to Mr D was for in my opinion a significant amount. And when taking into account the purpose of the loan which was for debt consolidation, which can be an indicator of financial difficulties, I think Zopa needed to ensure that the checks it carried out were reasonable and proportionate, to ensure that Mr D could sustainably afford to repay the lending it was considering providing to him. And given the circumstances of Mr D's application that I've described above, I don't think that the checks it carried out were reasonable and proportionate in the circumstances of this proposed lending.

What would reasonable and proportionate checks have shown?

Mr D has also provided copies of his bank statements which include the three-month period prior to this lending decision. I think this gives an indication of the information about his financial circumstances that reasonable and proportionate checks might have shown.

I've reviewed the statements again in light of the submissions made by S. The relevant pages in the statements for the period November 2016, to January 2017 are pages 27 to 32. The statements show that Mr D's account was in credit at the end of November and December 2016, but was overdrawn for significant periods during those months. And it was overdrawn by approximately £250 at the end of January 2017. In November 2016, there were credits into the account of just over £2,800 with what appears to include a salary payment of £1,687. In December 2016 there were credits into the account of just over £1,900. And in January 2017, there were credits into the account of just over £1,900. December and January appeared to include salary payments of £1,539.65.

So, it seems to me that November 2016 was not an average month which accurately represented the payments that would normally be paid into Mr D's account, and that an average figure of £1,900 is more representative of his monthly income. And I've noted that is the approximate average income figure that S has used for November and December 2016, in the I&E assessment that it has provided.

In its I&E assessment, S has set out the essential expenditure that it submits Mr D made in November and December 2016. It referenced payments Mr D made in respect of other unsecured debt. The expenditure figures also include the monthly payments of £188.41 that Mr D was paying in respect of the loan from the associated business, and the monthly payments for the consolidation loan Mr D was intending to take out.

As I've set out above, the recorded purpose of the loan was for debt consolidation. And I can see that after the loan proceeds of £10,000 was paid into Mr D's account on 2 February 2017, he made payments in the following week of approximately £6,700 towards his unsecured debt, including his credit cards. So, I'm satisfied that the reason Mr D took out the loan was for consolidating debt.

But he didn't pay off all his unsecured debt, including the loan for which he was making monthly payments of £188.41, or the finance agreement for which he was making monthly payments of £41.66. The credit report Zopa obtained at the time the loan was taken out, showed the outstanding balance for that loan was £2,926. And it seems to me more likely than not that the remaining balance of approximately £3,300, after the other unsecured debt had been paid off, was originally intended to pay off the balance on this loan as well. And if Mr D had used the remaining funds to repay that loan as well, then his monthly outgoings would have been reduced by that amount as well. That's why I think his ongoing monthly expenditure would have been reduced by £188.41 a month moving forward. But, as I've acknowledged above, Mr D chose not to use the balance of the loan funds to do that. So, he continued to pay that monthly amount as well as the payments of £277.95 for this loan.

I'm satisfied that if Mr D had paid off all of his existing unsecured debt as originally intended when he applied for the loan, it was affordable for him, as his monthly payments towards his unsecured debt would have been reduced as a result of taking out the loan. I can also see that Mr D continued to make the loan repayments for both loans without any apparent difficulties, which also suggests to me that the loan repayments could be sustainably made by him.

So, I think if Zopa had carried out reasonable and proportionate checks it would have realised taking into account the purpose of the loan, Mr D's circumstances were such that he could reasonably afford the additional loan it was providing to him.

Did Zopa make a fair lending decision?

For the reasons I've outlined above, I think that in the particular circumstances of Mr D's case, Zopa's providing of the loan to Mr D was a fair lending decision.

I have also considered whether Zopa acted unfairly in any other way, and in particular whether the relationship might have been unfair under s140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I don't think Zopa lent irresponsibly to Mr D or otherwise treated him unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

My final decision

For the reasons I've set out above, my decision is not to uphold Mr D's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 25 April 2025.

Simon Dibble
Ombudsman