complaint

Mr R's complaint is that Zopa Limited irresponsibly approved a loan of £10,000 to him in August 2015 which it ought to have known would be unaffordable for him. He seeks a refund of interest on the loan and of charges that may have been applied for missed or late payments.

background

One of our investigators considered the matter and concluded that it should not be upheld, for the following main reasons:

- Zopa's checks prior to approving the loan were sufficient and proportionate.
- The checks included confirmation in Mr R's credit report that he had around £26,000 in unsecured debts (based on three credit cards and two unsecured loans) but his payments were up to date.
- Despite living within his overdraft Mr R had disposable monthly income of around £1,400.
- There is evidence that Zopa declined loan applications previously made by Mr R because they did not meet its lending criteria – mainly in relation to his salary level. His January 2015 application was declined and at the time his annual salary was around £54,000. However, when his August 2015 application was accepted his salary had increased to around £72,000.
- The purpose for the August 2015 loan was stated as debt consolidation.
- The investigator was not persuaded that Zopa should have identified the gambling addiction that Mr R says he had (and says it should have identified). The bank statement provided to Zopa as part of the loan application showed £490 in gambling transactions but as this was a small percentage of his salary it would have been insufficient to suggest a gambling addiction. Zopa has also confirmed that Mr R never informed it about having a gambling addiction.

Mr R disagreed with this outcome. In the main, he said:

- The fact that his credit report at the time showed he had not missed a payment on his existing debts did not mean he could afford to take on additional debt.
- The investigator misinterpreted his status with regards to disposable income. The fact that he was living within his overdraft every month meant his disposable income was zero and that he was living on an interest bearing debt in its own right (that is, the overdraft). In this context, Zopa's awareness of his gambling transactions ought to have alerted it to an affordability problem. The £490 in gambling transactions amounted to 13.5% of his net monthly income, which was not insignificant.
- Zopa has displayed inconsistency by declining seven loan applications from him between 2010 and January 2015 based on salaries (and loan to salary ratios) that were not markedly different from what he was earning by (and the loan to salary ratio in) August 2015.

The matter was referred to an ombudsman.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Guidance, on responsible and irresponsible lending, from the Office of Fair Trading (OFT) prior to Mr R's loan in 2015 exists in its publication on the matter in 2010 (updated in 2011). In summary and with regards to the assessment of affordability, the OFT guidance says a 'borrower focused test' applies whereby the creditor firm assesses the borrower's ability to undertake the credit commitment "… *in a sustainable manner, without the borrower incurring (further) financial difficulties and/or experiencing adverse consequences*."

The regulator's rule(s) on the matter, under the Consumer Credit Sourcebook (CONC), includes CONC 5.2A 12R. The creditor firm is required to consider the customer's ability to make repayments as they fall due over the life of the credit agreement, the source from which such repayments would be made and the customer's ability to make such repayments without having to borrow, without failing to make any other credit repayments and without such repayments having a significant adverse impact on the customer's financial situation.

In Mr R's case and in summary, I consider that Zopa was obliged to ensure, from its assessment of his August 2015 loan application, that he had a source from which repayments could be maintained/sustained over the foreseeable future and that those repayments would not adversely affect him (for instance, in terms of additional indebtedness or other credit repayment problems). Overall and on balance, I consider that Zopa's assessment of Mr R's loan application reasonably established both of these and I am not persuaded by his assertion that its approval of the loan was irresponsible.

I understand Mr R's point about his monthly disposable income. His overdraft was indeed a debt in its own right. However, the point is more about the monthly income of around £1,400 that remained after his monthly outgoings and about the debt consolidation purpose he stated for the loan. The former conveyed the message that he had spare capacity (of £1,400) from his monthly salary – albeit that, after receipt of his salary, this existed within his overdraft – so it arguably stood as a source from which to make repayments. I have not seen evidence that his overdraft or employment was under immediate or foreseeable threat at the time, so this spare capacity could arguably have been viewed as a source from which he could make loan repayments over the foreseeable future.

In addition, there is evidence that the purpose stated for the loan was debt consolidation. Zopa has said it took this into consideration at the time of assessing the loan application. This would have been a reasonable basis to expect and foresee that some of Mr R's other debts – potentially including his overdraft – would be cleared by the loan, thereby reducing his responsibility in that respect and perhaps improving his prospect of maintaining the loan repayments for the foreseeable future without adverse effects on him.

Furthermore, there is no dispute that Mr R's credit report at the time was positive with regards to him having not missed repayments on his existing debts. He says this did not mean he could afford to undertake additional debt, but it also did not mean he could not afford to undertake additional debt. At the time, it would have indicated that he had a good history of maintaining debt repayments, which could suggest – so long as affordability was not a foreseeable issue – that he would do the same with a new debt. I do not consider it was unreasonable for Zopa to draw such a conclusion in this respect. Mr R has referred to a previous loan he had taken from Zopa which he successfully repaid, so that too would have lent itself to such a conclusion.

I have not seen evidence that Mr R informed Zopa about a gambling addiction or that it was aware of such a problem. I am also not persuaded that it ought reasonably to have suspected such a problem from information about £490 in gambling transactions within his bank statement. It would have been aware of the transactions but that is not the same as being aware of the possibility or probability of a gambling *addiction* problem – and the size of the transactions would not have readily suggested such a problem.

I do not consider that I have enough evidence about the assessments applied to the seven previous, and rejected, loan applications Mr R has referred to. In the main, available evidence relates to the loan that is the subject of the present complaint and it includes information about a notable increase (by almost £20,000) in his salary (which rose to around £72,000) by the time of the loan application in August 2015 and this too could reasonably have lent itself to the conclusion that the £10,000 loan (for the purpose of debt consolidation) was affordable for him.

Overall and on balance, I do not consider that there is a basis to uphold Mr R's complaint.

my final decision

For the reasons given above, I do not uphold Mr R's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 22 November 2019.

Roy Kuku
ombudsman