

complaint

Mr M complains that Zopa Limited irresponsibly sold him two personal loans he could not afford, and then sold them to a third party.

background

Mr M is represented in this complaint by his father.

In November 2014 Mr M took out a peer-to-peer loan brokered by Zopa and administered on Zopa's behalf by ARC. This loan was for £5,000 and was for a term of two years. Before that term ended, in June 2016 Mr M applied for and received a second loan, this time for £10,000 for five years. Shortly after that, he began to miss payments on both loans. He settled the first loan by the end of 2016, but the second loan was eventually defaulted in 2017 and sold to a third party in 2018.

After the decision to sell the loan had been made, but before it could be implemented, Mr M's father discovered what had happened. He spoke to ARC (with his son's authority) and told them that Mr M had mental health issues. However ARC did not pass this information on to Zopa until after the loan had been sold. Mr M's father complained on Mr M's behalf that the debt should not have been sold in the first place, and that once Zopa was made aware of Mr M's circumstances it should have immediately bought the debt back, but instead Zopa had claimed this was impossible. He also complained that both debts had been unaffordable, and that Zopa would have realised this if it had carried out proper affordability checks. When Zopa did not agree, Mr M's father brought this complaint to our Service. He argued that it was illegal to sell the debt. He also objected to ARC continuing to pursue the debt after it was sold. He complained about how long it took Zopa to address his concerns, and that this was stressful for him, for his wife, and for his son.

Zopa said it hadn't known about Mr M's mental health issues until ARC had told it, after it had already sold the loan. It had carried out credit checks, and in 2014 it had checked his bank statements to verify his income. In 2016, when Mr M had declared that his income had increased considerably, Zopa had used his old, lower income as the basis for its calculations, and had still found that he could afford the loan. (His father complains that Zopa failed to verify that Mr M was still employed.) It did not agree that it had mis-sold the loans, or that it should have realised that Mr M would struggle to afford them.

Our investigator did not uphold the complaint about mis-selling the loans. She said that lenders are generally entitled to believe what their customers tell them, except where they are told something which seems unlikely or which should prompt further questioning. (Mr M's father argues that an example of this was when Mr M told Zopa that he was a director of a particular company, but various evidence showed that he was actually director of another company.) However, she did uphold the complaint about selling the loan, since industry guidelines said that a loan should not be sold if the lender knows that the customer has mental health issues, and as ARC had been acting as Zopa's agent, it didn't matter that Zopa hadn't known. ARC had known, and should have cancelled the sale. So she recommended that Zopa buy the loan back, and also pay Mr M £100 for the delays in responding to his complaint.

Zopa agreed with that opinion, but Mr M's father did not. He said that as people with mental health issues rarely volunteer this information, Zopa should always ask for evidence to support what it is told. The bank statements provided in 2014 showed that Mr M's annual

income was only £18,700, not the £45,000 he'd claimed. In 2016 Zopa had relied on two bank statements 13 months apart, but three consecutive statements would have revealed that his average monthly income was lower than Mr M had said it was. He said it was implausible that someone who was really earning £80,000 a year (as Mr M had claimed in 2016) would need to take out two loans for £10,000 (this is a reference to a third loan from another lender, taken out shortly before the second Zopa loan). He asked for an ombudsman to review this case.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. However, I have not considered the complaint about the DSARs because I think that is a matter best left to the ICO.

I uphold the complaint about selling the loan, for the same reasons as our investigator gave. Although Zopa didn't know about Mr M's mental health, its agent did and that is enough. Selling a loan once it is known that a customer has mental health problems is contrary to the *Standards of Lending Practice*. And Zopa should not have said it was impossible to buy the loan back, once it knew.

However, I cannot compensate Mr M's parents for any stress or inconvenience caused to them by this, or by any delay in Zopa's handling of this complaint. This is because under the rules (made by the FCA) which set out the jurisdiction of the Financial Ombudsman Service, they are not eligible complainants in their own right. I can only award compensation to Mr M, since only he was Zopa's customer in relation to the loans this complaint is about. I think that £100 is in line with the level of compensation this Service would typically award for this issue, and is fair.

I turn to the complaint about mis-selling the 2014 loan. At the time, the relevant guidelines issued by the FCA said:¹

"...it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure, on a statement of those matters made by the customer." [Paragraph CONC 5.3.1(4)(b).]

And:

"A firm must not accept an application for credit under a regulated credit agreement where the firm knows or ought reasonably to suspect that the customer has not been truthful in completing the application..." [CONC 5.3.7]

It follows that a lender is entitled to believe what its customers tell it, provided that it still takes proportionate steps to verify their income and expenditure, and that there are no reasonable grounds to suspect that they have not been truthful.

Mr M told Zopa that £2,000 of the loan was to pay off credit card debts, which would actually save him money in the long run, since the interest on credit cards would have been more costly than this loan. Zopa checked Mr M's credit file, and found that he was not behind on paying any of his creditors. Zopa refused to accept a payslip Mr M had provided, because it didn't have his name on it. It asked for his bank statements instead. I think that these were responsible and proportionate checks.

¹ <https://www.handbook.fca.org.uk/handbook/CONC/5/3.html?date=2014-11-18&timeline=True>

The statements supplied covered a period of two and a half months, from September to mid-November 2014. Due to the passage of time, these are no longer available, so I can't see what Zopa relied on, or evaluate Mr M's claim that they would have shown that Mr M was only earning £18,700. But there is a note in Zopa's records about the lending decision, which says that the bank statement for September showed a salary payment to Mr M's account of £4,000. That note goes on to say "assume some maybe commission based" (*sic*). That implies that the salary payments in October and November were less than the one in September, but since I haven't seen the statements I have no way of knowing how much less.

Mr M had declared an annual income of £45,000. Zopa adjusted this to a monthly income of about £2,845 (which corresponds to about three quarters of his gross annual income, so I assume that this is meant to be net of income tax). Based on that figure (and his outgoings), Zopa had calculated his disposable income to be £2,080 a month. This was clearly more than enough to cover the loan repayments, which were £235 a month. That allows for a margin of error of £530 in the monthly income figure. I don't know whether the difference between Mr M's income in September 2014, and his income in either of the following two months, exceeded that figure or not. So I can't say that, based on the bank statements, Zopa had reasonable grounds to suspect that he had lied about his income.

Mr M's father has pointed out that the name of the employer Mr M provided in his loan application was incorrect, and that this should have served as a warning to Zopa. He says that a simple search of the Companies House website would have shown that Mr M was actually the director of another company with a completely different name, and that it was a new company, having only been founded in June 2014. However, while I agree that this did merit further investigation, that did not necessarily have to consist of checking with Companies House. Instead, Zopa searched the internet and found a website for a company with a very similar name, which listed Mr M (or at least someone with the same name as him) as a director. Zopa therefore assumed that the wrong company name was just an innocent mistake.

To maintain Mr M's anonymity, I won't give the names of these companies. Instead I will describe the nature of the difference between the names. The name on the loan application consisted of three initials. The name of the company Zopa found consisted of the same first and third initials, but with an ampersand between them instead of the second initial. So I can see why Zopa thought this was not untoward, and stopped its investigation when it did. It is unfortunate that the conclusion Zopa came to was wrong, but I don't agree that it was arrived at by negligence.

For all of these reasons, I am not persuaded that the 2014 loan was mis-sold.

I turn to the 2016 loan application. At that time, Mr M had made all of his payments under the 2014 loan, so his payment history was good. Zopa checked his credit file again, and found that he still had a good financial record. Since Mr M reported that he was working in the same job and at the same company, Zopa waived its usual employment check (but used his 2014 salary instead of the higher salary he now claimed to have). Since it was only 17 months since the first loan, I don't think that was unreasonable. Zopa had no reason to suspect that what he had told it was untrue, and under the rules it was only obliged to verify what Mr M told it about his income and expenditure, not about his employment history.

Mr M had recently taken out another loan with another lender, so this was going to be his third loan. This Zopa loan application was for £10,000, and the other loan was for £10,440. Zopa took that loan into account, and calculated Mr M's disposable income to be just short of £1,000 a month. His loan repayments were to be £230 a month, so the loan seemed to be affordable.

As evidence of income, Mr M provided bank statements for two months. They showed salary payments of about £5,200 and £7,800. But this time they were not for consecutive months, but were 13 months apart. His father argues that Zopa should have asked for statements for three consecutive months, because this would have shown that Mr M's average income was far less than these two statements suggested.

The FCA's guidelines in 2016 said that the information lenders should rely on "may ... include some or all of the following:

- (a) its record of previous dealings;
- (b) evidence of income;
- (c) evidence of expenditure;
- (d) a credit score;
- (e) a credit reference agency report; and
- (f) information provided by the customer." [CONC 5.2.4(3)]

The rules and guidelines did not prescribe what form evidence of income should take, and left a significant margin of discretion to lenders to decide for themselves how much evidence, and what kind of evidence, to accept. So I think Zopa was entitled to rely on the two bank statements that were provided to it, along with his payment history on the original loan and checking his credit file. I think that was enough. I don't think that a person with a salary of £80,000 taking out two loans of around £10,000 is so unusual that it should arouse suspicion. A person may earn that much and still not have enough savings to make a large purchase (such as buying a car). So I have concluded that the 2016 loan was not mis-sold.

Before I finish, I will address a question that Mr M's father asked about two entries in Zopa's records which state that the loans had been "assigned to Zopa" after falling into arrears. He has questioned this, not unreasonably, because he thought the loans had already been with Zopa in the first place. The answer is to be found in clauses 16 and 24 of the *Loan Conditions – Vehicle Financing* section of the loan contract (see pages 13 and 16 of the 53-page document). Clause 16(1)(b) says:

"We may freely transfer ... all of our future rights, title, interest and obligations ... to ... Zopa if we terminate this Loan Contract in accordance with clause 8."

(Clause 8 is about missing payments.) Clause 24 explains who "we" refers to:

" 'We' means the individual Lender who is advancing the credit ..."

On the next page there is a long list of individual lenders. So Mr M's contract was with each of them. (See also the top of page 1 of the loan contract, in the section headed "Parties.")

ARC managed the loan on the lenders' behalf. When the contract was terminated under clause 8, ARC assigned the loan to Zopa (the broker). I am satisfied that the loan was properly assigned to Zopa, because Mr M consented to this when he agreed to the loan contract.

my final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M (or his father on his behalf) to accept or reject my decision before 23 October 2020. But if we don't hear from him, then we will presume that he rejects it.

Richard Wood
ombudsman