

The complaint

Mr J complains that Zopa Bank Limited lent irresponsibly when it approved a loan application he made.

What happened

In March 2022 Mr J applied for £5,000 loan with Zopa. Mr J's explained that during this time he was suffering with mental illness that meant he was prone to impulsive actions. In his application, Mr J said he was renting at £575 a month and employed full time with an income of £30,000. Zopa carried out a credit search and found Mr J had a hire purchase agreement with £26,558 outstanding and a monthly payment of £413. Zopa also found Mr J had an overdraft with a balance of £771 and a credit card with a balance of £441.

Zopa says its lending criteria was applied to Mr J's application and it found he had sufficient income remaining once his commitments were covered to afford a new loan of £5,000 (£6,485.28 with interest applied) at £473.60 a month. The loan was approved and funds paid into Mr J's account on 17 March 2022.

On 31 March 2022 Mr J emailed Zopa to say he wanted to exercise his right to withdraw from the loan and return the funds – in line with the terms and conditions. No response was received and on 18 April 2022 Mr J emailed again to advise he hadn't received a response and the first repayment was due on 30 April 2022. Mr J says that as no response was received, he utilised the loan funds.

Last year, Mr J complained that Zopa had lent irresponsibly and it issued a final response on 7 December 2023. Zopa said it had applied its lending criteria and correctly approved Mr J's loan. Zopa added that if Mr J is experiencing financial difficulties he could make contact to discuss them. Details of other organisations that can provide support were also provided.

Mr J referred his complaint to this service and it was passed to an investigator. They weren't persuaded that Zopa had lent irresponsibly and thought it had carried out the necessary lending checks before deciding to proceed. The investigator also said Mr J's bank statements showed he'd used the loan funds for other purposes so they weren't available to repay Zopa following his email on 31 March 2022. The investigator asked Zopa to pay Mr J £100 for failing to acknowledge or respond to his emails.

Mr J asked to appeal and said that whilst the funds had been used, they could've been retrieved and used to repay the balance if Zopa had responded. Mr J also said Zopa had failed to act in line with regulations that require it to pay due regard to vulnerable customers or complete reasonable lending checks amongst other things.

Zopa said it was willing to pay Mr J £50 but didn't agree to compensation of £100.

As neither party accepted the investigator's recommendations Mr J's complaint has been passed to me to make a decision.

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.

I'm aware I've summarised the events surrounding this complaint in less detail than the parties involved. No discourtesy is intended by my approach which reflects the informal nature of this service. I want to assure all parties I've read and considered everything on file. I'm satisfied I don't need to comment on every point raised to fairly reach my decision. And if I don't comment on something, it's not because I haven't considered it. It's because I've focused on what I think are the key issues. My approach is in line with the rules we operate under.

Before agreeing to lend, the rules say Zopa had to complete reasonable and proportionate checks to ensure Mr J could afford to repay the debt in a sustainable way. These affordability checks needed to be focused on the borrower's circumstances. The nature of what's considered reasonable and proportionate will vary depending on various factors like:

- The amount of credit;
- The total sum repayable and the size of regular repayments;
- The duration of the agreement;
- The costs of the credit; and
- The consumer's individual circumstances.

That means there's no set list of checks a lender must complete. But lenders are required to consider the above points when deciding what's reasonable and proportionate. Lenders may choose to verify a borrower's income or obtain a more detailed picture of their circumstance by reviewing bank statements for example. More information about how we consider irresponsible lending complaints can be found on our website.

In this case, Mr J gave Zopa information about his circumstances at the time in his application. Mr J advised he was renting at £575 a month. Mr J also said he was employed full time with an income of £30,000. As noted above, a credit search found Mr J's had a hire purchase agreement with a payment of £413 a month as well as an overdraft of £771 plus a credit card of £441. Zopa's provided a copy of its lending assessment and I can see it took the monthly costs for servicing Mr J's existing debts into account when applying its lending assessment.

Zopa's added that in addition to looking at what Mr J owed on his credit file, it also verified the level of income he declared in the application by way of the credit reference agencies. The check involved verifying the level of income Mr J said was being paid into his account each month based on the data reported about his current account. And the check confirmed that Mr J's income was in line with the figure he gave in the application.

I've considered Mr J's comments and the relevant regulations Zopa was operating under when the loan application was assessed. As I've noted above, there was no requirement on Zopa to obtain copies of Mr J's bank statements or evidence of his income specifically. Zopa was obliged to carry out reasonable and proportionate checks to verify whether Mr J was able to sustainably make repayments.

Looking at the application data, I'm satisfied Zopa did complete reasonable and

proportionate checks. Zopa verified Mr J's outgoings for rent and credit commitments and verified the level of income declared within the application. Zopa found that Mr J had a disposable income of around £900 a month once his regular outgoings were factored in so approved the loan with repayments of £473.60. In my view, the information Zopa obtained indicated Mr J was able to sustainably manage repayments to the loan. I'm sorry to disappoint Mr J but I haven't been persuaded that Zopa failed to carry out proportionate checks or lent irresponsibly.

Mr J's explained that his first payment wasn't made on time which should've identified he was vulnerable to Zopa. But Zopa's records show the first payment was successfully made on 17 April 2022. The payment due on 17 May 2022 wasn't received on time, but was made up by Mr J on 1 June 2022. Zopa's confirmed that whilst late, the payment wasn't recorded as missed. I haven't seen evidence that shows the way Mr J's payments were made ought to have caused Zopa to have identified him as being vulnerable at the point of application.

Mr J's supplied copies of emails he sent Zopa asking to exercise his right to withdraw from the loan. Zopa didn't respond and has highlighted that whilst the emails came from an email address in Mr J's name, there was no other identifying information, like the loan account number or his personal details. Zopa says there was no way to verify the emails Mr J sent were genuine so didn't respond. I've considered whether this impacted the ability to withdraw from the loan.

Zopa's loan terms give the following information about the right to withdraw:

You have the right to withdraw from this Agreement without giving any reason by giving us oral or written notice of your intention to withdraw within 14 days after (a) the day the agreement is made... (b) the day you receive a copy of the signed Agreement, whichever is latest. Any such notice of withdrawal must be given either orally by calling... or by email to ... or by facsimile transmission to... or by post at our address listed above. Where you give us such notice of withdrawal, you must repay to us any credit provided to you under this Agreement... You must make such repayment without undue delay no later than the end of the period of 30 days beginning with the day after which the notice of withdrawal was given. The credit due and payment in the event of your withdrawal must be paid to us at the following bank account...

Zopa's terms provide the sort code and account number customers must use to return the funds when exercising the right to withdraw.

So whilst I accept Mr J didn't receive a response to his emails, I'm satisfied the terms and conditions of Zopa's loan confirmed what Mr J needed to do. And they provided the account details for the funds to be returned to along with the timescales to do so. In my view, Mr J could've followed the guidance noted in Zopa's terms and conditions and repaid the funds borrowed.

I also think the investigator makes a reasonable point when they noted that the funds didn't appear to be immediately available to repay the balance in line with the right to withdraw. I accept Mr J's argument that he may've been able to retrieve the funds, but his current account doesn't show Mr J had the £5,000 immediately available during the 14 day cooling off period.

The investigator noted that Zopa could've done more to contact Mr J when he sent the emails and I think that's fair. Whilst I'm satisfied Mr J could still have returned the funds to Zopa without a direct response, it would clearly have been better if his email had been acknowledged and an attempt to verify him made. The investigator asked Zopa to pay Mr J £100 for the distress and inconvenience caused and I agree that figure fairly reflects the

impact to him. So I'm going to award £100 to Mr J for the distress and inconvenience caused.

I'd like to assure M J that I've read and considered everything he's told us, including the information about his mental health and vulnerability at the time of application. I don't doubt what Mr J has told us or that he was going through a particularly difficult time. But I haven't seen anything in the information available to Zopa at the time of Mr J's application that I feel could reasonably have identified him as being vulnerable. As I've noted above, I think the level and nature of Zopa's checks were reasonable in the circumstances of Mr J's application.

I note that, in his response to the investigator, Mr J questioned whether Zopa's approach was in line with the Consumer Duty rules. But those rules came into effect on 31 July 2023 and Mr J's application was made in March 2022. The Consumer Duty rules aren't retrospective. So I'm satisfied they don't apply to the complaint Mr J's made about the circumstances of his loan application in March 2022.

Mr J's told us that he's experiencing difficulties maintaining payments and is being regularly contacted by Zopa. As this doesn't form part of Mr J's complaint to Zopa and it hasn't had the opportunity to investigate and respond, it's not something I can consider in this decision. But I can see that Zopa's final response provided details of the support it can offer along with organisations that may be able to help. I can only recommend that Mr J works with Zopa if he's experiencing financial difficulties. If he remains dissatisfied with Zopa's actions, Mr J has the option of complaining and referring his concerns to us as a separate case.

I'm very sorry to disappoint Mr J but as I haven't been persuaded Zopa lent irresponsibly I'm unable to uphold this part of his complaint. I am upholding Mr J's case in part on the basis that Zopa failed to respond to his emails concerning the right to withdraw and awarding £100 for the distress and inconvenience caused.

My final decision

My decision is that I uphold Mr J's complaint and direct Zopa Bank Limited to settle by paying him £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 8 April 2024.

Marco Manente
Ombudsman