DRN-4669988

The complaint

Mr B has complained through a representative that Zopa Bank Limited ("Zopa") didn't conduct sufficient affordability checks before it lent to him.

What happened

Zopa operated a lending platform which gave Mr B a 36-month loan for £10,000 on 11 November 20219. The monthly repayments were £358.83 and the total repayable was £12,918.03.

Mr B had had some difficulties repaying the loan and it is currently being repaid through a debt management plan of £14.74 per month. Zopa, in its file to the Financial Ombudsman also said the loan had been sold. By that, I think it means the administration and collection of the balance is now the responsibility of a third party.

Following Mr B's complaint Zopa wrote to his representative and explained it wasn't going to be upholding the complaint. Unhappy with this response, Mr B's representative referred the complaint to the Financial Ombudsman.

An investigator upheld Mr B's complaint about the loan because she said Zopa hadn't conducted proportionate checks taking into account the amount advanced, the term of the loan and the amount of debt Mr B already had.

Had further checks been conducted Zopa it would've likely discovered Mr B's income wasn't as high as he had declared, and all of his living costs took up the majority of his income which didn't leave enough for Mr B to be able to repay this loan.

Zopa didn't agree saying Mr B's application was automatically approved following the information he provided, and his income being verified. Based on Zopa's checks there was no cause for any concern about Mr B's ability to repay the loan. As no agreement could be reached the complaint has been passed to me to decide.

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.

We've set out our general approach to complaints about unaffordable/irresponsible lending - including all of the relevant rules, guidance and good industry practice - on our website. And I've used this approach to help me decide Mr B's complaint. Having carefully considered everything I've decided to uphold Mr B's complaint. I'll explain why in a little more detail.

Zopa needed to carry out proportionate checks to be able to understand whether Mr B could afford to repay any credit it provided. Our website sets out what we typically think about when deciding whether a lender's (or operator of electronic system in relation to lending such as here) checks were proportionate. Generally, we think it's reasonable for checks to be less thorough – in terms of how much information is gathered and what is done to verify it – in the early stages of a lending relationship.

But we might think more needed to do be done if, for example, a borrower's income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So, we'd expect a firm to be able to show that it didn't continue to facilitate a customer's loans irresponsibly.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr B's complaint. Having looked at everything I have decided to uphold Mr B's complaint and I've explained why below.

Mr B, as part of the online application declared he worked full time and received a gross income of £60,000 per year which Zopa worked out to be £3,611.25 per month. Zopa says Mr B's income figure was verified through a credit reference agency.

It doesn't appear that Zopa asked Mr B for any details of his day to day living costs, but it has explained taking account of the credit commitments it saw in the credit check (which I come on to below) as well as his mortgage payment and taking account of his Zopa payment Mr B was left with around £1,290 per month. Zopa therefore concluded the loan was affordable.

Zopa, as part of its affordability assessment carried out a credit search and it has provided a summary of the results it received from the credit reference agency. I want to add that although Zopa carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard. This can and does mean information which is given to a lender may be different to what a consumer can see by reviewing their own report. But what Zopa needed to do was consider the results it received.

Zopa says the credit check results showed that Mr B had 7 active credit accounts (4 credit card cards, 2 loans and a hire purchase agreement). Given the information Zopa received it worked out that Mr B's total payments towards his credit commitments came to around £1,026 each month.

Zopa went onto explain that there were no adverse payment markers recorded against the active accounts and it therefore believed, that given what was left over from Mr B's income the prospective loan payments were affordable and further checks weren't needed.

However, like the investigator I do think further checks ought to have been carried out when thinking about the sum that was being borrowed, the term it was lent over, the fact that Zopa didn't appear to have had an understanding of Mr B's general living costs and the fact that he already had credit card debt of around £25,000 along with a hire purchase agreement which still had a balance of just over £18,000.

Zopa was also told that Mr B had within the 7 months of the loan start date he had taken two other loans which he still owed almost £20,000 towards – and Zopa ought to have considered why Mr B was now – wanted a further loan in such a short period of time. All of these factors to me ought to have led Zopa to conclude it needed to carry out further checks.

I've therefore considered what further checks are likely to have shown.

Mr B has now provided us with evidence of his financial circumstances at the time he applied for this loan. Of course, I accept different checks might show different things. And just because something shows up in the information Mr B has provided, it doesn't mean it would’ve shown up in any checks Zopa might’ve carried out.

But in the absence of anything else from Zopa showing what this information would have shown, I think it’s perfectly fair, reasonable and proportionate to place considerable weight on what this information says as an indication of what Mr B’s financial circumstances were more likely than not to have been at the time.

I also think it’s important for me to set out that Zopa was required to establish whether Mr B could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation.

The information provided in the bank statement shows that Mr B’s income wasn’t as high as Zopa was led to believe and although this was checked at the point of application, I do think further checks would’ve highlighted that this wasn’t accurate. Mr B’s income was more like £2,500 per month, which made the loan unsustainable, given the cost of the loan, with the mortgage and the existing credit commitments led to monthly outgoings of just over £2,300 per month and I can see from the statements other living costs such as food and travel cost which would’ve further increased these costs.

As this is the case, I think that proportionate checks are likely to have shown Zopa that Mr B was unlikely to be able to afford the payments to this loan, without undue difficulty or borrowing further. So, I’m satisfied that reasonable and proportionate checks would more like than not have shown Zopa that it shouldn’t have brought about this loan for Mr B.

It therefore follows that Mr B is currently expected to pay interest, fees and charges on a loan that he shouldn’t have had. So, I’m satisfied that Mr B has lost out and Zopa should put things right for him as set out below.

Putting things right

If Zopa has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If Zopa can’t buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

- Zopa should remove all interest, fees and charges from the balance of the loan and treat any repayments made by Mr B as though they had been repayments of the principal. If this results in Mr B having made overpayments then it should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.
- If after re-working the account, a balance still remains due then Zopa should try and come to an affordable repayment plan with Mr B but I would remind it of its obligation to treat him fairly and with forbearance as well as taking account of Mr B’s debt management plan.
- Zopa should remove any adverse information recorded on Mr B’s credit file in relation to the loan once it has been settled.

*HM Revenue & Customs requires Zopa to deduct tax from this interest. Zopa should give Mr B a certificate showing how much tax it has deducted, if he asks for one.

My final decision

For the reasons given above, I uphold Mr B’s complaint.

Zopa Bank Limited should put things right for Mr B as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 20 June 2024.

Robert Walker
Ombudsman