

## The complaint

Mr R complains that Zopa Bank Limited (Zopa) defaulted his loan.

## What happened

Mr R took a personal loan for £6,000 from Zopa. It was drawn down in June 2023 and repayments were £317 per month – 24 payments were due to be made. The first three payments were made successfully but then Mr R was out of work and suffered a decline in income. The payments for September 2023, October 2023 and November 2023 (all due 26<sup>th</sup> monthly) weren't paid.

Zopa wrote to Mr R on 17 October 2023; 23 October 2023; 30 October 2023; and 13 November 2023.

On 28 November 2023, Zopa sent a Notice of Default with the arrears at £951. This said the arrears were due to be paid by 28 December 2023.

On 29 November 2023, Mr R's loan account was credited with £67 as a partial repayment.

On 26 December 2023, the payment due then wasn't paid.

On 2 January 2024, Zopa sent Mr R an email which said a default notice would be issued soon and said the arrears were £1,201.

On 3 January 2024, Zopa made formal demand for repayment of the balance of £5,757.83 – the loan was defaulted and the credit reference agencies notified.

On 5 January 2024, Mr R paid in £1,268.

Mr R complained. He said:

- He spoke to Zopa on 8 January 2024 and the call handler said the default was a mistake and would be removed.
- Zopa had gone ahead and defaulted the loan – and hadn't followed the process set out in the email dated 2 January 2024 – which said that a Notice of Default would be issued, and a default could follow – and as he hadn't had a Notice of Default, Zopa hadn't followed their correct process.
- He hadn't received the Notice of Default sent on 28 November 2023.
- Even if the Notice of Default was sent on 28 November 2023, the default shouldn't have taken place in any case – as he wasn't three months behind with payments.

Zopa said:

- The loan arrears started to build up in September 2023.
- Mr R spoke to Zopa on 10 November 2023 and because he was out of work, Zopa agreed a 30-day breathing space hold, but payments would still fall due.
- Zopa wrote to Mr R on 13 November 2023 and said the loan would soon default.
- A Notice of Default was sent to Mr R on 28 November 2023 – and arrears of £951

- had to be paid by 28 December 2023 to prevent the default.
- Zopa called Mr R on 19 December 2023 but the call didn't progress – Mr R didn't feel comfortable in providing information.
- The email dated 2 January 2024 explained a Notice of Default would be sent soon, but this email was an error - as the Notice of Default had already been sent on 28 November 2023.
- Because the arrears hadn't been paid (in line with the Notice of Default dated 28 November 2023), the loan was defaulted on 3 January 2024.
- While a payment was made on 5 January 2024, this was after the default had taken place.
- The conversation with Mr R on 8 January 2024 mistakenly said the default was an error and would be removed. Zopa apologised for that. The call handler also said the next payment would be collected by direct debit on 26 January 2024 – this was also a mistake. For this, Zopa offered compensation of £60.

Mr R didn't accept the compensation offer and brought his complaint to us. Our investigator said the default was registered correctly; but accepted that Zopa made errors in sending Mr R the email dated 2 January 2024 and in telling him in the call that the default would be removed. For Zopa's errors, he said the firm should pay compensation of £160 – an additional £100.

Mr R didn't accept this, he said the default should be removed – given Zopa's errors, this was the only logical and fair conclusion.

### **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.

There are two main areas to consider in Mr R's complaint:

- The arrears; and did Zopa act reasonably in defaulting his loan?
- Zopa's communications about Mr R's loan account.

#### *Arrears:*

The guidance for dealing with defaults is laid down by the Information Commissioner's Office (ICO). This says when a consumer is at least three months behind with their payments then a default may be registered. And it would expect a default to be registered by the time the consumer is six months behind with their payments. It is the business' responsibility to put an entry on the credit file. This cannot be taken off unless it is an error. So here, I need to decide if the default was made in error or unfairly.

I can see that by 26 November 2023 – Mr R had missed three months' payments, i.e. arrears of £951. Mr R argues that as he made a *partial* payment of £67 (credited on 29 November 2023), he wasn't three months in arrears. I've considered his points here.

But – as he hadn't paid *the full contractual amounts due* (i.e. £317 for each of the three months), he was three months in arrears, and so Zopa were entitled to advise him that he was likely to default – and sent him the Notice of Default to say that. The fact that he paid in £67 on 29 November 2023 didn't have any effect on this – he was still three months' in arrears. Also, the Notice of Default was dated 28 November 2023 – which was before the credit of £67 was paid in, and the notice reflected what had happened up to that date.

The Notice of Default dated 28 November 2023 said that the arrears of £951 had to be paid by 28 December 2023. I can see that nothing was paid in by that date, and so Zopa went ahead and defaulted the loan on 3 January 2024 – the firm sent a letter of demand on that date asking for the balance to be paid.

*Communications:*

*Notice of Default dated 28 November 2023:* The crux of Mr R's complaint is that he didn't receive this and so it couldn't have been sent. But I've seen the evidence from Zopa's records that it was sent to Mr R's home address. Our service takes the view that if a firm sends correspondence in this way, we can't reasonably hold them responsible if it wasn't delivered or received. And I'm satisfied Zopa sent the Notice.

And as I've said, the Notice of Default was clear – the arrears were £951 and had to be paid off by 28 December 2023 to avoid a default taking place. It said *"Action required to remedy: Payment of the total arrears of £951.00 before 28 December 2023.... If you do not take the action required by this notice before the date shown then the further action set out below may be taken against you... The credit agreement will be terminated and notice in writing will be served demanding payment of the outstanding balance as set out below on or after the date specified above and your default will be reported to credit reference agencies...."*

*Other communications:* I looked at the other letters sent to Mr R and I think it's reasonable to say he was advised of the situation on his loan several times.

17 October 2023: letter stated he had missed a payment, and asked Mr R to bring payments up to date.

23 October 2023: reminder to bring loan payments up to date.

30 October 2023: Letter stating loan was two months in arrears.

13 November 2023: Letter stating loan two months in arrears; and *"Your loan will soon go into Default. To avoid this, contact us now....get in touch now to avoid a Notice of Default"*

*Email dated 2 January 2024:* I reviewed this and it is fair to say it did warn a Notice of Default could be sent. Mr R argues that this started the process and as Zopa defaulted his loan the next day, that was unfair.

I've considered this point and while I hear what he says, the main point is that I'm satisfied Zopa sent him the Notice of Default and in line with the arrears outstanding on the loan on 28 November 2023 – and the default letter dated 3 January 2024 correctly followed on from that. The fact that Zopa emailed him on 2 January 2024 doesn't stop or cancel the previous Notice of Default – that would only be the case if Mr R had then brought the payments up to date as the Notice of Default asked (by 28 December 2023) – and he didn't.

*Call 8 January 2024:* I listened to the calls that took place on that date. And I agree the call handler stated the default would be removed. I'm not sure why she said that – as I heard the call handler take internal advice (while Mr R was on hold) which was that the default couldn't be removed, and to advise Mr R of that.

I have to consider what was said on 8 January 2024 in the context of the written communications sent to Mr R over a period of time – and importantly, the Notice of Default dated 28 November 2023 as well as the other communications. Zopa made an error in saying what they did – but I don't consider it is fair to say that means the default should be removed. I say that as the Notice of Default dated 28 November 2023 was still live and in

operation – and that is the crux of this decision.

But – I agree with our investigator that Zopa should pay compensation of £160 (Zopa's offered £60 plus £100) for the error on the phone. I know that Mr R will be disappointed by this, but I've reviewed his complaint thoroughly and I'm satisfied that this is fair and reasonable outcome for his complaint.

### **Putting things right**

Zopa should pay compensation of £160.

### **My final decision**

I uphold this complaint. Zopa Bank Limited must:

- Pay compensation of £160 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 3 October 2024.

Martin Lord  
**Ombudsman**