

## **Complaint**

Mr T has complained that Zopa Bank Limited (“Zopa”) irresponsibly increased the credit limit on his credit card.

He is also unhappy that his card wasn’t blocked when he called up and asked for this to happen.

## **Background**

In March 2021, Zopa provided Mr T with a credit card which had an initial limit of £300. Mr T’s credit limit was increased to £600 in January 2022 and then £900 in June 2023. The credit limit on Mr T’s account was finally increased to £1,600.00 in January 2024.

Zopa didn’t think that it had done anything wrong when providing Mr T with his credit card, increasing his credit limit on the occasions it did, or when Mr T and asked for his card to be blocked. So it didn’t uphold the complaint. Mr T was dissatisfied with Zopa’s response and referred his complaint to our service.

One of our investigators looked at everything provided and he thought that Zopa had hadn’t done anything wrong or treated Mr T unfairly. So he didn’t think that the complaint should be upheld.

Mr T disagreed with our investigator’s assessment and asked for an ombudsman to review his complaint.

## **My provisional decision of 22 June 2024**

I issued a provisional decision – on 22 June 2024 - setting out why I was intending to partially uphold Mr T’s complaint.

In summary, I was intending to partially uphold Mr T’s complaint because although I was minded to conclude that Zopa didn’t act unfairly or unreasonably towards Mr T when proving him with a credit card or the subsequent credit limit increases; it did fail to act fairly and reasonably towards him when he got in contact asking for his credit card to be blocked.

## **Mr T’s response to my provisional decision**

Mr T confirmed his acceptance of my provisional decision and said that he didn’t have anything further to provide me with for consideration.

## **Zopa’s response to my provisional decision**

Zopa responded to confirm that it didn’t have anything further to add. And whilst it accepted that the service was not the best for Mr T it did not think that the level of compensation that I proposed was fair.

## **My findings**

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

Having carefully thought about everything, including the responses to my provisional decision, I'm still partially upholding Mr T's complaint. I'll explain why in a little more detail.

*Zopa's initial decision to lend to Mr T and then increase his credit limit on the three occasions it did so*

We've set out our general approach to complaints about unaffordable and irresponsible lending - including the key relevant rules, guidance and good industry practice - on our website.

Zopa needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to have a reasonable understanding of whether Mr T could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

With this in mind, in the early stages of a lending relationship, I think less thorough checks could be reasonable and proportionate. But certain factors – such as a low income, or a high amount being borrowed - might point to the fact that Zopa should fairly and reasonably have done more to establish that any lending was sustainable for the consumer.

I've kept all of this in mind when deciding Mr T's complaint. For the sake of completeness, even though Mr T has mainly referred to the credit limit increases he was provided with, I have reviewed all of Zopa's lending decisions as part of my consideration of Mr T's complaint.

Mr T's credit card was initially opened in March 2021 with a credit limit of £300. Mr T's credit card, under the regulator's rules and guidance, is also known as a revolving credit facility. As this was a revolving credit facility, this meant that Zopa was required to understand whether Mr T could repay around £300 within a reasonable period of time. Not whether he could pay the entire amount in one go.

As I understand it, Mr T confirmed that he had an annual income of £23,000.00 and that this may have been validated against information from credit reference agencies on the amount of funds which went into Mr T's main bank account each month. In any event, even if this wasn't validated, the information Mr T has provided shows that his declaration was broadly accurate.

Zopa also carried out a credit check before initially agreeing to provide this credit card. Zopa's credit check showed that Mr T had some existing credit commitments. But I don't think that this was excessive compared to Mr T's income and Mr T appears to have been managing these commitments reasonably well.

What is important to note is that a credit limit of £300 would have required relatively low monthly payments in order to clear the full amount owed within a reasonable period of time. And the information I've seen about Mr T's circumstances does suggest that he had the funds to make these payments. As this is the case, I'm satisfied that it wasn't unreasonable for Zopa to have agreed to open Mr T's credit card for him.

As I've explained in the background section of this decision, Zopa subsequently increased Mr T's credit limit on three occasions until it eventually reached £1,600.00 in January 2024. Zopa has said that it continued carrying out credit searches on Mr T and considered this in conjunction with relying on Mr T's conduct and record on his credit card when deciding if it should make additional amounts available to him.

However, while I accept that there is an argument for saying that Mr T was managing his Zopa account well (he was making payments of an amount sufficient to repay higher credit limits within a reasonable period of time), I am mindful that Mr T had nonetheless made a number of cash withdrawals on his card. And as this is an expensive way to borrow this can sometimes – but not always – be an indicator of underlying difficulties.

That said, I'm also mindful that the credit checks Zopa carried out showed that Mr T was managing his external commitments well. He still had no significant adverse information – such as defaulted accounts or county court judgments – recorded against him. And Mr T's external debts weren't increasing to an unsustainable level either.

Indeed, Mr T's external debt actually decreased in the period between the June 2023 limit increase and the January 2024 one. So when considering the cash withdrawals in the overall context of the information Zopa had, I don't think that these should have been seen as a sign that Mr T actually was in financial difficulty.

In any event, given the amount Mr T would be expected to pay on limits of £900 and £1,650.00, I would have expected Zopa to have found out more about Mr T's committed expenditure (particularly about his actual regular living expenses) before offering these increased funds to him.

Zopa has been unable to evidence having done this in this instance. As this is the case, I don't think that the checks it carried out before it provided the June 2023 and January 2024 limit increases were reasonable and proportionate.

Ordinarily, where a firm failed to carry out reasonable and proportionate checks before providing credit or increasing the amount available to a customer, I'd usually go on to recreate reasonable and proportionate checks in order to get an indication of what such checks would more likely than not have shown.

However, I don't think that Zopa attempting to find out further information about Mr T's living costs would have made a difference here. I say this because I've not seen anything that shows me that when Mr T's committed non-discretionary regular living expenses and existing credit commitments were deducted from what he received each month, he did not have the funds to make sustainable repayments to the balances that could have been owed as a result of the limit increases.

I accept that the real reason for the difficulty Mr T went on to have making his payments wasn't due to his existing credit commitments or his living expenses. And that this is readily apparent when all of the bank statements Mr T has provided are considered. But what I need to think about here is what did Zopa need to do in order for its checks to have been proportionate – in other words, what were Mr T's actual committed living expenses (bearing in mind his credit commitments had already been validated against information from credit the credit searches)?

Given checking bank statements wasn't the only way for Zopa to have found out more about Mr T's actual living costs – it could have obtained copies of bills or other evidence of payment etc – I don't think that proportionate checks would have extended into obtaining bank statements.

For the sake of completeness, I'd also add that Mr T's gambling transactions were from a separate account to the one which received his income and that his committed expenditure was going out from. And I simply wouldn't expect a lender to routinely consider bank statements for multiple accounts when deciding whether to lend in the circumstances that Zopa made its lending decisions on Mr T's account.

Furthermore, given Mr T's acceptance of the limit increases show that he wanted the extra funds, at the time at least, I consider it unlikely that Mr T would have volunteered the bank statements for the account he was gambling from. So while I've thought about what Mr T has said about his problem gambling, I don't think that Zopa could reasonably be expected to have known about the nature and extent of this at the time of the respective decisions - particularly as Mr T owed less externally at the time his credit limit was increased to its largest amount too.

Overall and having carefully considered everything, I'm not persuaded that proportionate checks would have shown Zopa that it shouldn't initially have provided this credit card, or any of the subsequent credit increases to Mr T.

So I'm not upholding this aspect of Mr T's complaint. I appreciate this will be very disappointing for Mr T. But I hope he'll understand the reasons for my decision in relation to this matter and that he'll at least feel his concerns have been listened to.

#### *Zopa's actions once Mr T asked for his card to be frozen*

It isn't in dispute that Mr T called Zopa on 26 February 2024. I've listened to a recording of this call and having done so, I know that Mr T explained that he wanted to be prevented from using his card because he was suffering from a gambling addiction and he was worried that having continued access to his credit card left him with a potential source of funds to gamble.

During this call Zopa's agent told Mr T that it would not be possible to do anything along these lines because Mr T had an outstanding balance on his card. It's clear that Mr T was unhappy with this but reluctantly accepted that Zopa wasn't able to do anything about preventing him spending on his card.

The following day Mr T called Zopa again and made a similar request. This time Mr T was told his card could be frozen and that this would be done unless and until he requested any block was removed. It's my understanding that even though Mr T was told that this would be done, this wasn't in fact done. And Mr T had to call up again on 28 February 2024 to make a formal complaint. It was only after Mr T made a formal complaint that his card was permanently blocked and he was referred to Zopa's dedicated customer care team.

Both Zopa and our investigator recognised that there were failings in the service that Zopa provided once Mr T got in contact. But they agreed that the £25 Zopa offered was fair and reasonable. And Zopa's response to my provisional decision acknowledged that the service provided to Mr T was not the best.

I've considered what has been said and while I appreciate that Zopa has acknowledged that there were shortcomings in the service it provided, I don't think what it has offered to do, adequately addresses the degree of its shortcomings or the consequences of its actions. I'll explain why I think this is the case.

To start with, I note that Zopa's response to my provisional decision said it did not consider that the compensation that I proposed in my provisional decision was fair. However, it hasn't

elaborated on why it thinks this is the case. So I don't know whether it doesn't agree with my conclusions on what loss Mr T suffered as a result, or whether it is unhappy with the amount of compensation I think it should pay as a result of the distress and inconvenience that its actions caused. In any event, for reasons I'll go on to explain, I'm satisfied that Zopa should put things right in the way that I set out in the proceeding sections of this final decision.

Mr T was able to make at least one transaction after he was incorrectly told that it was not possible to block his credit card while he had an outstanding balance. It isn't clear to me why Mr T wasn't passed to Zopa's specialist customer care team once he informed the first operative that he had a gambling problem and needed help. It's possible that the operator didn't know about the team – although it does sound like she tried to get assistance from a colleague in order to respond to Mr T's query.

In any event, the reasons for Mr T not being passed over to the specialist team are not important. What is important is that the existence of Zopa's specialist customer care team in itself suggests that it recognises the need to deal with customers in the position Mr T was in, sensitively and addressing any vulnerability. I'm satisfied that Zopa failed to recognise Mr T's vulnerability and as a result failed to deal with his difficulty in a sensitive way – despite him flagging it up on 26 February 2024.

Bearing in mind Zopa's actions after Mr T's complaint, it seems to me that had it appropriately identified Mr T's vulnerability at this stage, the difficulties he was experiencing, and most importantly acted upon this in a fair and reasonable way, it would more likely than not have permanently blocked his credit card and referred his account to its dedicated customer care team on 26 February 2024.

So, in my view, any gambling transactions, or cash withdrawals (given Mr T explained to Zopa on 26 February 2024 this was how he was using his card to gamble) added to Mr T's balance, after 26 February 2024, are, at a minimum, his loss in this instance. I'm satisfied that the offer of compensation Zopa has made does not address this and that in order to address Mr T's loss it needs to reduce his outstanding balance on his credit card by the amount of any gambling transactions or cash withdrawals made after 26 February 2024.

I now turn to an award for distress and inconvenience. As I've explained, Zopa has offered Mr T £25 for the distress and inconvenience its actions caused and its response to my provisional decision appears to suggest that it continues this to be fair. I know that our investigator also initially said that he considered this to be fair and reasonable too.

Nonetheless, I don't have to agree with the investigator. I have to consider the evidence and reach my own conclusions on this. It is my prerogative to reach a different conclusion from an investigator should I be satisfied that the facts, circumstances and evidence in a case warrant doing so.

Having listened to the calls between Mr T and Zopa, Mr T not only tells Zopa that he is distressed by the situation, it is clear that he is getting increasingly distressed through the course of each call. So I'm satisfied that Zopa's actions were upsetting and that the impact on Mr T was more than just minimal, or in keeping with the general frustration and annoyance experienced in everyday life, which, in my view, the amount of Zopa's offer reflects.

Mr T had to make two additional phone calls (he was always going to have to make at least one call to let Zopa know about the situation) as well as had to deal with the effect of being able to gamble in circumstances where he informed Zopa of the impact that this would have on his wellbeing.

In my view and in the absence of any persuasive arguments to the contrary, I remain satisfied that an amount of £200 more adequately compensates Mr T for the distress and inconvenience he experienced. And I'm making an award for this in this final decision. Ordinarily, I would direct a firm to pay an award for distress and inconvenience directly to a customer, even if that customer had an outstanding credit balance.

However, I'm mindful of the circumstances here. In particular, I cannot ignore the fact that the entire premise of Mr T's call to Zopa, on 26 February 2024, was concerned with his card needing to be blocked as he has bad judgement when it comes to money management because of his gambling. I've agreed that Zopa failing to block Mr T's card in these circumstances saw it act fail to act fairly and reasonably to Mr T and this is why I'm upholding this aspect of his complaint.

In my view, it would be unfair to Zopa and Mr T, as well as being unreasonable in its logic if I were to reach these conclusions in relation to whether (and why) Zopa failed to act fairly and reasonably towards Mr T, yet take no account of these conclusions in what it now needs to do.

Mr T has said having access to funds is problematic in his current position (or at least it was a few months ago) as it is likely to exacerbate his gambling. Therefore, I think that requiring Zopa to pay £200 in compensation directly to Mr T would be counterproductive, not in his interests and therefore not a fair and reasonable way of putting things right.

So there is a need for me to balance what Mr T has said about his circumstances and what this means for compensation against the fact that Zopa's actions have caused him distress. In these circumstances, I'm satisfied that Zopa making a further reduction to Mr T's account balance, rather than paying him £200 directly, fairly and reasonably achieves this balance.

I'm therefore directing Zopa to reduce the balance on Mr T's credit card by a further £200, once it has made the adjustments it needs to make in relation to the transactions which took place after 26 February 2024.

In reaching my conclusions I've also considered whether the lending relationship between Zopa and Mr T might have been unfair to Mr T under section 140A of the Consumer Credit Act 1974. However, I don't think Zopa lent irresponsibly to Mr T. I'm also satisfied the redress I direct below and have described in further detail above results in fair compensation for Mr T given the overall circumstances of his complaint. I'm satisfied that, based on what I've seen, no additional award is appropriate in this case.

### **Fair compensation – what Zopa needs to do to put things right for Mr T**

Having carefully considered everything, I'm satisfied that it would be fair and reasonable, in all the circumstances of Mr T's complaint, for Zopa to put things right in the following way:

- rework Mr T's account to ensure that his account is recredited with any gambling transactions or cash withdrawals made after Mr T called Zopa on 26 February 2024. Any interest associated with these transactions should also be removed from what Mr T owes;
- after all adjustments have been made to Mr T account, then Zopa should reduce what Mr T owes by a further £200 to reflect the distress and inconvenience that it failing to act fairly and reasonably towards him caused.

### **My final decision**

For the reasons I've explained above and in my provisional decision of 22 June 2024, I'm partially upholding Mr T's complaint. Zopa Bank Limited needs to put things right in the way I've directed it to do so above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 5 August 2024.

Jeshen Narayanan  
**Ombudsman**