DRN-4264436

The complaint

Mr R complains that Zopa Bank Limited (known as Zopa at the time) provided misleading information about the projected returns available through its Peer-to-Peer (P2P) lending platform. He says he relied on the information when deciding to open a P2P account. He also complains about how his loans were acquired when the platform closed. He says he has suffered losses as a result.

What happened

In 2016, Mr R opened a P2P lending account on Zopa's platform. He based his decision to invest on the information he reviewed on Zopa's website about projected returns and default rates.

Mr R says he noticed within the first two years of investing that the actual default rates experienced for his loan portfolio were significantly higher than Zopa's projections, so his returns were lower than he expected. He decided to sell some loans in order to mitigate against ongoing further losses. He incurred a charge for selling these loans. The loans he sold were up to date and it wasn't possible to sell the non-performing loans in his portfolio.

On 7 December 2021, Zopa advised investors that it would be stopping consumer investments and transferring all loans to its newly formed parent company. It proposed to buy Mr R's loan portfolio at current face value (plus any interest that borrowers had already paid up to the date of sale) and said he'd receive his investment balance back by 31 January 2022.

After receiving notification that the sale of his portfolio was complete, Mr R raised a query about not receiving anything for his defaulted loans. Zopa responded to say that Mr R's defaulted loans had been acquired – but as they were defaulted, the value of that loan drops to £0, so he wouldn't receive a payment for these loans.

Mr B made further inquiries but wasn't satisfied with the responses he received from Zopa, so raised a complaint. He said the performance of his portfolio compared to the anticipated default rates and forecast returns, means Zopa didn't carry out its duties properly or with due care in relation to the loans allocated to him. He was concerned that Zopa didn't do all it could do recover monies from defaulted loans. He also raised a point about Zopa keeping any future recovered funds from defaulted loans it had acquired from him without payment.

Zopa responded to the complaint. It explained why it had closed its P2P platform and why it was able to purchase loans from investors as part of the process. It also reiterated that defaulted loans hold zero value, so this is why they are acquired without payment. It said it isn't compensating customers for the potential recoveries that could be made through defaulted loan recoveries – and explained the majority of defaulted loans in the P2P portfolio have already been sold off through debt sales. It said not all defaulted loans are eligible for a debt sale due to things like customer bankruptcy or vulnerability - i.e. cases in which minimal capital recovery is expected. It also acknowledged Mr R was unhappy with the returns on his investment but said returns were never guaranteed. And because he invested in the Zopa Plus product, this came with higher returns but more risk.

Mr R didn't feel this response answered the specific points he made in his complaint. Zopa responded again. In summary it said:

- All loans are subjected to risk control checking, and where appropriate manual underwriting – and higher defaults experienced are likely to do with the risk of the product Mr R invested in.
- Investments come with risk, and there is never a guaranteed return. It ran regular debt sales on loans that were not performing or had defaulted in the attempt to recover monies for all investors.
- The impact of the 2020 pandemic resulted in higher defaults than anyone could have expected.
- It will not be providing the information in respect of recovery action Mr R requested as it is commercially sensitive.

As Mr R didn't agree with this response, he referred his complaint to this service for an independent review. One of our investigators looked into the complaint. She didn't uphold it. In summary she said:

- Zopa forecast a return of 6.7%, however this was not a guarantee of returns.
- Zopa explained the potential increased returns as well as the potentially higher risk of investing with the Zopa Plus product.
- Mr R's investment was allocated to the correct levels of risk as Zopa had stated in its promotion.
- She found the information given by Zopa on its website to be fair and not misleading and was satisfied that the risks were explained properly.
- When Mr R sold his historic loans, he was charged a 1% fee. She found this fee was made clear before he sold his loans, so didn't see that Zopa have done anything wrong when it levied the charge.
- She found the January 2022 acquisition of the loan portfolio hadn't treated Mr R unfairly. While he did have loans acquired at zero value, this was because they had defaulted, with little prospect of future return.

Mr R didn't agree with the investigator's findings and requested his complaint to be passed to an ombudsman to reach decision. He reiterated his concerns that Zopa did not do all that was practical to recover monies first, before writing off the value of any loan. He also said Zopa has unilaterally acquired his defaulted loans for no cost – and again raised that Zopa would keep any future recoveries or could sell defaulted loans (keeping any sale proceeds).

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.

Mr R is disappointed with the returns he's received on is portfolio. He has explained when he signed up to become a P2P lender with Zopa he relied on information about expected returns and defaults to make his decision to invest, but he feels he was misled and refers to the actual performance of his loans – including higher default rates.

I've looked at the information that was available on Zopa's website at the time Mr R opened his account. There were projections and estimations of returns and defaults – but by their very nature these weren't guarantees for future performance. Zopa also provided risk warnings that capital wasn't secure. The Zopa Plus product was described as having higher projected returns, but with a caveat that there was a higher expected credit risk. There was also a reminder that past performance isn't a reliable indicator for future result - and forecasts aren't reliable indicators for future performance.

I note Mr R believes given the high proportion of defaulted loans, Zopa didn't risk rate loans properly or allocate loans properly to his portfolio. I haven't seen anything to support this claim. I've seen that his loan portfolio was spread across the various risk bandings of loans in line with the described characteristics of the product he selected. As he began to sell loans and reduce his portfolio by not reinvesting, he ended up with remaining loans that had run into payment issues.

Mr R has also questioned whether Zopa did all it could have done to recover monies, before writing off the value of any loan. He's suggested it would seem easier and cheaper for Zopa to default and write off loans rather than expend its resources on recovery actions. Again, I haven't seen any evidence to support this. There is a balance to be struck between the likely success of recovery actions and the cost of undertaking such actions. A judgement is made with Zopa acting in the interest of all lenders, and it also had obligations towards borrowers in respect of how it pursued underperforming loans. I don't agree it was in Zopa's interest to avoid taking recovery actions and right off loans prematurely. I do understand why Mr R is unhappy that more of his loans defaulted than he was expecting, but I haven't found this to be as a result of failings by Zopa.

The fact Mr R is disappointed with returns, doesn't necessarily mean Zopa are at fault. I need to see evidence that Zopa's failing had caused losses or misled Mr R into investing in something that he wouldn't otherwise have done. I haven't found evidence that Zopa's failings caused the losses Mr R is unhappy about or that he was given misleading information prior to investing.

Mr R has also raised concerns about how the remaining loans in his portfolio were acquired by Zopa when it decided to close its P2P platform to retail customers. Zopa says the decision was made essentially due to commercial viability, market conditions and challenges brought about by regulation. So, it appears Zopa was exercising its commercial judgement when deciding whether its P2P platform was viable on an ongoing basis. This is something it is able to do and not something I am able to make judgement on. But I can consider whether Mr R has been treated fairly in how his investments have been administered as a result of this decision.

I understand Mr R essentially de-invested from the platform several years before Zopa decided to close it. In December 2021, when the decision was communicated to investors, Zopa has confirmed the funds Mr R had left on the platform were valued at around £50 and were in non-performing and defaulted loans. It doesn't appear his account had been actively used for some while.

Mr R has argued that he has been treated unfairly by not being paid anything for his outstanding defaulted loans. I understand the point he makes about the principle of the potential for future recovery payments to be made or sale of the loans – so his defaulted loans still hold some potential value. But I also need to look at the circumstances of his remaining defaulted loans and the likelihood of him receiving further money from them had they not been acquired by Zopa. Having carefully considered everything – I don't propose to ask Zopa to make any payment to Mr R.

Mr R invested a significantly larger amount of money on the platform than the amount remaining at the time of acquisition of his defaulted loans. Zopa says he deposited £10,000 and had withdrawn approximately £10,700. Most of his funds had been withdrawn by the end of 2018, leaving a very small balance of funds left. Not only was it a significantly smaller amount of money, but the likelihood of recovery actions also returning much of the remaining money appears to be extremely limited.

At the time of the portfolio acquisition, Zopa says there were four defaulted loans left that had all gone into formal recovery many years earlier. So, these were loans that had failed to be fully recovered despite being in default for many years. I also acknowledge the points made by Zopa regarding loans that have been default for some time are unlikely to be eligible for a debt sale due to situations of bankruptcy or vulnerability. So, the balance of evidence doesn't support the chances of any meaningful future recovery being achieved. It is not unexpected that some P2P loans will fail to recover capital as this in an inherent risk of this type of investment.

While it isn't possible to make a definite statement on future recovery, on balance, the evidence doesn't support that Mr R's defaulted loans were likely to pay back much, if anything at all. Taking all of these circumstances into account, I don't find Zopa's action of acquiring Mr R's defaulted loans with a zero value to be unreasonable when considering the position of his loan portfolio at the time of acquisition. I also note Zopa says it did make Mr R a small payment that covered the face value of two loans that were in arrears. This is fair and reasonable in the circumstances.

Lastly, I note Mr R has referenced a news article regarding Zopa re-entering the P2P market by acquiring a loan portfolio. Mr R says this links to his complaint points about the potential for Zopa to make recoveries on the defaulted loans it acquired from him. This article doesn't appear to be directly related to the loan acquisition process that was announced in December 2021. So, I don't find this is relevant to my considerations of the specific complaint Mr R has brought to this service - or that it impacts my consideration of what is fair and reasonable outcome of this complaint.

I understand this will come as a disappointment to Mr R, but I haven't found that Zopa needs to pay him any compensation from the loan sale. For the reasons above, I reach a finding that he hasn't been treated unfairly by Zopa when it acquired his loans when closing the platform or when he first opened his account.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 December 2023.

Daniel Little
Ombudsman