

## **Complaint**

Mr H has complained about a personal loan Zopa Bank Limited (trading as “Zopa”) has accepted responsibility for arranging for him. Mr H says the loan was unaffordable and was therefore irresponsibly provided to him.

Zopa Bank Limited has accepted responsibility for the former Zopa Limited’s Peer to Peer activities. In any event, I will refer to the respondent in this case as Zopa.

## **Background**

Zopa operated the electronic system in relation to lending which led to Mr H being provided with a loan for £10,000.00 loan in March 2018. This loan had an APR of 17.9% and a term of 12 months. This meant that the total amount to be repaid of £10,922.99, including interest, fees and charges of £929.99 (comprising of a borrowing fee of £220 and interest of £709.99) was due to be repaid in 12 monthly instalments of £910.25.

One of our investigators reviewed Mr H’s complaint and that thought that Zopa didn’t do anything wrong when arranging Mr H’s loan. So he didn’t recommend that Mr H’s complaint be upheld.

Mr H disagreed with our investigator’s assessment. So the case was passed to an ombudsman as per the next step of our dispute resolution process.

## **My provisional decision of 7 December 2023**

I issued a provisional decision – on 7 December 2023 - setting out why I intended to uphold Mr H’s complaint. I won’t copy that decision in full, but I will instead provide a summary of my findings.

I started by explaining that we’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And that I had used this approach to help me decide Mr H’s complaint.

Zopa needed to make sure it didn’t bring about Mr H’s loan irresponsibly. In practice, what this means is that Zopa needed to carry out proportionate checks to be able to understand whether Mr H could afford to repay any credit it arranged.

Our website sets out what we typically think about when deciding whether a lender’s (or equivalent 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 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 an electronic platform to be able to show that it didn’t continue to bring about loans for a customer irresponsibly.

I considered what Zopa had done and its actions in light of this.

Zopa said that it arranged this loan as it established Mr H had £713.06 in disposable income. I presumed that this was after the loan payment was included given £713.06 wouldn't be enough to repay £910.25 and that would therefore make the loan unaffordable.

In any event, irrespective of the position, I found Zopa's calculations to be questionable and that this meant Mr H's application merited closer scrutiny. I thought that this was the case for multiple reasons.

The first thing I believed to be noteworthy was that the payments for the loan were high. And they would be taking up close to half of Mr H's declared income. I thought that this in itself ought to have been a cause for concern and a prompt to do more to verify a prospective borrower's expenditure.

Additionally on Zopa's calculation, Mr H only had other expenditure of some £300 each month. However, Zopa's checks indicated that Mr H was pretty indebted. Its checks suggested that he had a debt-to-income ratio of some 30-40% (I used this approximation as there was more than one figure in the information provided). I couldn't see how Mr H only had around £300 in expenditure in these circumstances.

In my view, this was called into question even more by the fact that Zopa's checks indicated that Mr H was a homeowner with a mortgage too. And would therefore have additional expenditure in relation to running a home. So I simply could not reasonably see a scenario where Mr H would be left with £713.06 in disposable income after this £910.25 monthly repayment was made, he had a mortgage and other debts and he only earned £1,970.00 or so a month.

In my view, the information Zopa had and obtained was inconsistent, at face value didn't seem to add up and warranted further scrutiny. And bearing this in mind, I was satisfied that Zopa needed to find out more about Mr H's actual income and expenditure before concluding that the payments to this loan were affordable for him.

Mr H had provided us with evidence of his financial circumstances at the time he applied for his loan. I accepted that different checks might have shown different things. And just because something showed up in the information Mr H had provided, it did not mean that it would have shown up in any checks Zopa might have carried out.

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

It was also important to note that Zopa was required to establish whether Mr H could sustainably make his loan repayments – not just whether the loan payments were technically affordable on a strict pounds and pence calculation. The loan payments being affordable on a strict pounds and pence basis might have been an indication that a consumer could sustainably make the repayments.

But it did not automatically follow that this was the case. And as a borrower shouldn't have to borrow further in order to make their payments, it followed that a lender should realise, or it ought fairly and reasonably to realise, that a borrower would not be able to sustainably make their repayments if it was on notice that they were unlikely to be able to make their repayments without borrowing further.

I carefully considered the information available in light of all of this.

The information provided showed the reason for Mr H's indebtedness and apparent inability to manage his money. Given what I saw, it was clear and apparent to me that Mr H was unlikely to have been able to repay this loan without borrowing further or experiencing financial difficulty.

As this was the case, I thought that Mr H's existing financial position meant that he was unlikely to be able to afford the repayments to this loan, without undue difficulty or borrowing further. And I was satisfied that reasonable and proportionate checks would more like than not have shown Zopa that it shouldn't have arranged this loan for Mr H.

As Zopa operated the electronic system in relation to lending that saw Mr H provided with this loan, notwithstanding this, I was minded to conclude that Zopa failed to act fairly and reasonably towards him. And I explained that it was my intention to issue a final decision upholding this complaint.

I thought that Mr H ended up paying interest, fees and charges on a loan he shouldn't have been provided with. So it was my intention to find that Mr H lost out because of what Zopa did wrong and issue a final decision which directed Zopa to put things right for Mr H.

### **Responses to my provisional decision**

Mr H responded to say that he was happy with the provisional decision and didn't provide anything further for me to consider.

Zopa also responded. In summary it:

- Did not offer any comment on whether it disagreed with my findings that it failed to act fairly and reasonably towards Mr H when arranging his loan for him.
- Said that the complaint was outstanding far longer than it should have been due to an administration error on our part and so it did not agree that it should have to pay 8% simple interest for this whole period.
- It is typically asked to pay 8% simple interest from the date that the customer overpaid the amount borrowed and wanted this considered.

### **My findings**

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

I've read and considered all the evidence and arguments available to me from the outset, in order to decide what is, in my opinion, fair and reasonable in all the circumstances of the case.

I thank the parties for their submissions. I set out in some detail why I intended to uphold Mr H's complaint in my provisional decision of 7 December 2023.

Zopa doesn't appear to have offered any comment on whether it did anything wrong when arranging this loan for Mr H and instead has focused on what I think it needs to do to put things right for Mr H. And as Mr H has accepted my provisional decision, I'm satisfied that there is no reason for me to alter the conclusion I reached, in my provisional decision, that Zopa didn't act fairly and reasonably towards Mr H when arranging his loan for him.

I've therefore focused my further findings on the arguments Zopa has raised regarding the award of 8% simple interest I set out in my provisional decision.

In the first instance, I wish to be clear in saying that my direction on interest, fees and charges refers to the extra Mr H paid over and above the capital amount that he was lent (Mr H's effective overpayments), rather than on the initial amortisation schedule of Mr H's loan. So I'm satisfied that Mr H is entitled to a refund of the extra he paid over and above the £10,000.00 he was originally lent.

And as my 8% a year simple interest award is for Mr H not having the use of funds he would have the use of but for Zopa's actions, I'm satisfied that he was only out of pocket once the original £10,000.00 was paid – it's clear that he would not have had use of the original £10,000.00 had Zopa not arranged his loan for him.

This means that Zopa's argument that it should only pay Mr H simple interest from the point where he paid more than the initial £10,000.00 as this is when he was out of pocket, is correct. And I'm satisfied that what it is saying it needs to do is compliant with the direction proposed in my provisional decision, confirmed in this final decision and our usual approach to putting things right in these types of cases.

I now turn to when Mr H should be paid 8% a year simple interest up to. Zopa accepts that Mr H's complaint was referred to us in time. But it is unhappy at our service's delays in progressing matters. I'm sorry to see that Zopa is unhappy with the time taken to resolve Mr H's complaint. However, as I've explained, my award on 8% a year simple interest is meant to reflect the fact that Mr H has lost the use of the funds he will now be refunded and at this stage no one knows what these funds would have been used for.

Mr H will not be returned his interest, fees and charges (or overpayments) until Zopa settles this final decision. So I'm satisfied that when the refunded payments were made to the date of the refund is the period Mr H will have not had use of the funds for and it follows that this is the period Mr H should receive 8% a year simple interest for. This is in line with our typical approach to putting things right where a customer has lost the use of funds they would otherwise had the use of, had it not been for a respondent firm's actions.

I appreciate that Zopa is unhappy with the delays in this case getting to an investigator and while it has not directly stated this, it just states that it isn't responsible for the time taken, I presume that it believes I should make a different award as a result. I've carefully considered Zopa's arguments on this point.

However, it is my understanding that the complaint was quickly progressed through to an ombudsman after the initial investigation. And it's possible that this case, in any event, may only have ever reached an ombudsman at the point it did. Furthermore, it was always open to Zopa to settle the matter with Mr H prior to the case reaching an ombudsman – after all it now accepts that it should not have arranged this loan for Mr H in the first place.

So while I've considered the further comments that Zopa has made in response to my provisional decision of 7 December 2023, I don't think that this means I should depart from our usual approach on putting things right. And I remain satisfied that Zopa should pay 8% simple interest for the date his interest, fees and charges (or overpayments) were made to the date that Zopa settles the complaint in line with the direction in this final decision.

Overall and having considered everything, I've not been persuaded to alter the conclusions I reached in my provisional decision. I'm therefore still upholding Mr H's complaint. And I remain satisfied that Zopa needs to put things right for Mr H.

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

Having thought about everything, I'm satisfied that it would be fair and reasonable in all the circumstances of this complaint for Zopa to put things right for Mr H by:

- refunding all interest, fees and charges (including the borrowing fee) (in effect the "overpayments" on the capital advance Zopa arranged) Mr H paid on his loan;
- adding interest at 8% per year simple on Mr H's refunded overpayments from the date they were made by Mr H to the date of settlement†
- removing all adverse information it may have recorded about this loan from Mr H's credit file.

† HM Revenue & Customs requires Zopa to take off tax from this interest. Zopa must give Mr H a certificate showing how much tax it has taken off if he asks for one.

### **My final decision**

For the reasons I've explained above and in my provisional decision of 7 December 2023, I'm upholding Mr H's complaint. Zopa Bank Limited should 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 H to accept or reject my decision before 19 January 2024.

Jeshen Narayanan  
**Ombudsman**