DRN-2390731

The complaint

Mr N complains that Retail Money Market Ltd trading as RateSetter irresponsibly gave him a fixed sum loan agreement that he couldn't afford.

What happened

In May 2016, Mr N applied for a fixed sum loan of £12,000 with RateSetter in order to consolidate his existing credit commitments. The loan was repayable in 60 monthly repayments of around £371. The total repayable, including the loan fee, was around £22,250.

Mr N maintained the monthly repayments until February 2017, when he started to fall into arrears. In March 2019, Mr N complained to RateSetter about the large loan fee that had been added to the agreement at the beginning (of around £6,500), the amount of the APR and that the loan had been irresponsibly approved as he couldn't afford it.

RateSetter said it had made all the information about the agreement clear including the APR and loan fee and that if Mr N wasn't happy with the amounts he didn't have to sign the agreement. It said that as part of the application it had verified Mr N's income and completed a credit check which showed that the lending was affordable.

Our investigator didn't recommend the complaint be upheld. He didn't think RateSetter had carried out reasonable and proportionate checks before approving the loan. However, he said that if it had done, it would likely have still concluded that the lending was affordable and sustainable to Mr N.

Mr N didn't agree. In summary, he said that RateSetter ought to have checked his bank statements before approving the lending. He said this would have shown he couldn't afford it and that he was gambling large amounts each month. He said RateSetter should have seen he had taken out a number of loans in the months before this one which ought to have indicated he was likely to be in financial difficulty and relying on borrowing. He said other complaints about irresponsible lending against those firms have since been upheld.

The complaint has been passed to me for a final decision.

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.

In doing so, I've considered – amongst other things – the rules and guidance for lenders set out in the Consumer Credit Sourcebook ("CONC") within the Financial Conduct Authority's handbook. I think there are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of this complaint. These questions are:

1. Did RateSetter complete reasonable and proportionate checks to satisfy itself that Mr N would be able to repay the borrowing in a sustainable way?
    a. If so, did it make a fair lending decision?

    b. If not, would reasonable and proportionate checks have shown that Mr N could sustainably repay the borrowing?
2. Did RateSetter act unfairly or unreasonably in some other way?

Did RateSetter complete reasonable and proportionate checks to satisfy itself that Mr N would be able to repay the borrowing in a sustainable way?

Before granting credit, RateSetter were required to carry out a reasonable and proportionate assessment of Mr N's ability to sustainably repay the borrowing. This is often referred to as an 'affordability check'. This check had to be borrower-focussed. This means it needed to be concerned with whether Mr N could sustainably afford the borrowing (considering his specific circumstances), rather than how statistically likely he was to repay. The latter is the risk posed to RateSetter as the lender, or its 'credit risk' but this is not necessarily the same as an assessment of affordability.

What's considered reasonable and proportionate will vary depending on a number of factors such as, but not limited to:

- The amount of credit;
- The total repayable and the size of the regular repayments;
- The duration of the agreement;
- The cost of the credit; and
- The consumer's individual circumstances.

What this means is that there isn't a one-size-fits-all approach to what is considered proportionate as any of these factors (or others) might influence what a reasonable and proportionate check ought to be.

The total amount repayable under the agreement was around £22,250 over a term of 60 months. So this was a reasonably large commitment for Mr N given the duration and size of the borrowing. His monthly repayments were around £371 which also isn't insignificant. My starting point therefore is that a reasonable and proportionate affordability check ought to have been relatively thorough.

I can see RateSetter asked Mr N about his employment including his annual income. He declared this to be £30,000 which RateSetter calculated to be around £1,900 per month. RateSetter says it also verified this income using credit reference agency data which confirmed that Mr N's declared income was likely to be accurate.

RateSetter asked Mr N what he needed the loan for and he declared it was to consolidate existing debts. He listed his existing debts on the application and RateSetter verified this by carrying out a credit check.

The credit check showed that Mr N had a number of loans and credit cards with a combined outstanding balance of around £12,500. As Mr N was seeking to borrow £12,000 to pay off those existing debts, RateSetter assumed his only existing credit commitment after taking out the loan would be just the RateSetter loan as the other credit would be paid off. It therefore calculated that Mr N could afford the loan.

There wasn't anything on the credit check that I think ought to have raised too many concerns with RateSetter. However, I do think it should have done more before agreeing to lend to Mr N. He was utilising almost all of his available revolving credit. However, there wasn't any adverse information recorded, except for one, which was a current account that had defaulted with a balance of £8. While it was a small balance, RateSetter ought to have enquired about this further as it might indicate Mr N was already at a point where he was finding his overall debts unmanageable.

RateSetter could see that by consolidating his debts, Mr N's monthly repayments towards his overall debts would go down. While this shows Mr N would be in a better position than he was before he took out the RateSetter loan, it still on its own didn't demonstrate it was affordable to him. I say this because RateSetter didn't have any understanding of what Mr N's other regular, non-credit commitments were.

Given the small default showing on his credit file and the size of the loan and monthly repayments, I think it would have been reasonable and proportionate for RateSetter to have asked Mr N about his other committed expenditure. I therefore don't think RateSetter carried out reasonable and proportionate checks before lending.

Would reasonable and proportionate checks have shown that Mr N could sustainably repay the borrowing?

It's not clear what further information or evidence RateSetter would have sought if it had carried out reasonable and proportionate checks. I've reviewed Mr N's bank statements for the months leading up to the application and he's also provided our service with a breakdown of his monthly expenditure. I'm not suggesting RateSetter were required to request bank statements. But, in the absence of anything else, I think these give a good indication of what it would likely have found out if it had asked Mr N about his expenditure.

Mr N says that his average income was lower than what was completed on the application form. He says it was around £1,700 per month. I've seen this too from the bank statements he provided. However, I don't think it was unreasonable for RateSetter to have relied on the information Mr N provided them (around £1,900 per month), particularly when it had looked to verify this in some way using credit reference agency data.

It's possible Mr N might have told RateSetter the true figure of £1,700 had it asked him more detailed questions about his income and expenditure. For the benefit of doubt, I've therefore used that figure when assessing what RateSetter would have likely found out about his circumstances.

Mr N has given us a breakdown of his expenditure in the month after the RateSetter loan, he says it was around £1,650 per month, leaving him with just £50 in disposable income towards unexpected or emergency costs. From looking at his bank statements, this appears to be broadly accurate, although some of the costs he's listed appeared to have been lower prior the application.

Mr N's own calculations show he had enough money to be able to afford the RateSetter loan, but I accept it would have left things very tight for him each month. Arguably this wouldn't be sustainable in the long term. However, Mr N had included a payment of £100 per month towards a credit card.

The purpose of the loan was to consolidate all of his existing debts. From looking at his credit file, Mr N would only have around £500 left to pay towards his existing debts after using the funds from RateSetter. This means that even if RateSetter had reached a similar conclusion about Mr N's expenditure to what Mr N has provided us now, it would have seen that within a few months he'd have around £150 in disposable income each month (once the £500 credit card debt had been repaid). I think this would have been a sufficient amount to have not caused RateSetter concerns about affordability.

I’ve also considered that it’s possible (and arguably more likely) that RateSetter would never have reasonably discovered Mr N’s income wasn’t £1,900 per month. This would have shown a much greater level of affordability.

Taking everything into account, I think that if RateSetter had completed reasonable and proportionate checks it would still have likely found that the loan appeared affordable and sustainable to Mr N. For this reason, I don’t think it needs to do anything to put things right.

Mr N has said that he was gambling at the time and this made any borrowing unsustainable and unaffordable to him. But as I don’t think RateSetter should have reviewed Mr N’s bank statements as part of the application, I don’t think it would have reasonably known about the gambling.

Lastly, he says other complaints he’s made about unaffordable lending against other loan providers have been upheld. As I’ve said above, there isn’t a one-size-fits-all approach to what is reasonable and proportionate in every lending decision. Each case is considered on its own unique circumstances. For the reasons I’ve given, I think RateSetter would likely have still concluded the loan was affordable and sustainable to Mr N even if it had completed reasonable and proportionate checks.

Did RateSetter act unfairly or unreasonably in some other way?

Mr N says the loan fee was excessive, as was the APR and it wasn’t made clear how much either of these would be. He says the APR was originally advertised at a much lower rate. I’ve reviewed the documentation that was presented to Mr N, including the credit agreement. I think both the loan fee and APR were made clear on these documents. Mr N wasn’t under any obligation to enter into the loan if he didn’t think the terms were acceptable to him.

Further, I’ve not been presented with anything to suggest it’s likely RateSetter misled him about either the APR or loan fee that would be applied. While Mr N has said the APR was advertised at a lower rate, this isn’t necessarily the rate every consumer would receive as the APR is dependent on individual circumstances. Overall, I’ve not seen anything to say RateSetter acted unfairly or unreasonably in some other way.

My final decision

For the reasons given above, I don’t uphold this complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr N to accept or reject my decision before 10 May 2021.

Tero Hiltunen
Ombudsman