DRN-2984924

The complaint

Miss B says Retail Money Market Ltd (trading as RateSetter) facilitated a loan for her that she couldn't afford.

What happened

Miss B took out a loan for £2,000 through RateSetter's electronic system in January 2017. The loan total of £2,364.24, including interest and a loan fee of £294.40, was to be repaid in 12 monthly instalments of £197.11.

Miss B says RateSetter didn't carry out sufficient checks and the loan got her into more debt. She says she had health issues that impacted her ability to manage her finances and the lender never asked her to provide any information on her mental health. Also, her partner – she was trapped in a financially abusive relationship – used her bank account to fund his gambling addiction.

Our investigator recommended Miss B's complaint should be upheld. In summary, he said RateSetter didn't carry out proportionate checks. And better checks would have shown that Miss B was having problems managing her money and so there was a risk further borrowing would be unsustainable for her.

RateSetter disagreed, saying Miss B's declared income was successfully validated using a third-party tool so it did not need to ask for bank statements. And it can see from a subsequently declined application that Miss B settled her mail order account and a payday loan as she planned to.

As an agreement wasn't reached the complaint was passed to me to make 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.

I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

RateSetter operated the electronic system in relation to lending which led to Miss B being provided with a loan, so it needed to check that Miss B could afford to meet her repayments sustainably before bringing about this agreement for her. In other words, it needed to check she could repay the credit out of her usual means without having to borrow further and without experiencing financial difficulty or other harmful consequences.

The checks needed to be proportionate to the nature of the credit and Miss B's circumstances, and RateSetter needed to respond appropriately to the information it gathered. The overarching requirement for RateSetter is that it needed to pay due regard to Miss B's interests and treat her fairly.

With this in mind, the questions I first need to consider are did RateSetter complete reasonable and proportionate checks when assessing Miss B's application to satisfy itself that she would be able to make her repayments in a sustainable way? If not, what would reasonable and proportionate checks have shown?

RateSetter asked Miss B for information about her income. It says it verified this using a third party. It made an assumption about the percentage of her income she was spending on living expenses. It checked her credit file to understand her credit commitments and credit history, and says it found nothing of concern. It asked about the purpose of the loan which was to consolidate three debts. From these checks RateSetter concluded Miss B had sufficient disposable income for the loan to be sustainably affordable.

Miss B raised that RateSetter never asked for information about her mental health. But this is not something lenders are obliged to do when making lending decisions, and indeed it wouldn't generally be appropriate. We would of course expect RateSetter to have responded appropriately, and make any reasonable adjustments required, had Miss B chosen to disclose her health issues. But I have seen no evidence that Miss B made RateSetter aware.

I accept that RateSetter's checks would be proportionate in many circumstances. But in this case, I don't think they were. I say this for a number of reasons. The income verification check gave a high confidence level that Miss B's declared income was accurate, but it also showed that her income had changed by 103% in the previous three months. I think this merited further investigation. It knew from the credit search that Miss B had 17 searches recorded against her in the previous two months. And it also knew Miss B had an active payday loan.

I am not saying any of these issues were a reason not to lend – and I note the purpose of the loan was debt consolidation. But I think, in the round, these findings ought to have triggered RateSetter to do further checks to get the assurances it needed that Miss B's finances weren't under undue pressure. Particularly as it had not checked her outgoings at all.

Miss B has provided her bank statements for the two months prior to her application. To be clear, I am not suggesting that RateSetter ought to have looked at these, but it is a way for me to understand what Miss B's income and expenditure was generally around that time.

They show that had RateSetter carried out proportionate checks at the time it would most likely have seen Miss B was having problems managing her money and did not have the level of disposable income it had assumed in its affordability assessment.

There were frequent gambling transactions totalling on average around 45% of her declared income each month. This supports Miss B's testimony that her partner was using her account to fund his gambling addiction. For clarity, my finding that follows would be the same irrespective of whether it was Miss B, or her partner, spending from her account in this way. Had RateSetter been aware of this expenditure, I think it would have realised it was unlikely Miss B would be able to sustainably repay this loan (so without borrowing to repay or suffering some other harmful financial consequence). So I don't think it would have progressed Miss B's application in these circumstances.

It follows I think RateSetter was wrong to lend to Miss B.

I have then considered whether RateSetter acted unfairly or unreasonably towards Miss B in some other way. I don't think it did and I'll explain why.

Miss B has told us she was struggling with her mental health at the time and was in a financially abusive relationship. I am very sorry to hear she was dealing with such challenging circumstances. But I can't see from her contact with RateSetter that it was, or ought to have been, aware of this. Miss B repaid the loan early in March 2017 and doesn't appear to have raised her financial difficulties (which might have led to a wider discussion about her personal circumstances) with the business at any stage. So I can't fairly find any failings on the part of the business to respond appropriately to what she has now told us.

Putting things right

I've found that RateSetter was irresponsible to have brought about this loan for Miss B and so I don't think she should have paid any interest or charges associated with it. I do think she should repay the capital amount, as she's had the use of these funds.

RateSetter should:

- refund all interest and charges (including the loan fee) applied to the loan, and;
- add interest at 8% per year simple on the above from the date they were paid to the date of settlement†;
- remove any adverse information recorded on Miss B's credit file as a result of this loan.

†HM Revenue & Customs requires RateSetter to take off tax from this interest. It must give Miss B a certificate showing how much tax it's taken off if she asks for one.

My final decision

I am upholding Miss B's complaint against Retail Money Market Ltd (trading as RateSetter). It must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 17 February 2022.

Rebecca Connelley
Ombudsman