

The complaint

Mr M complains about the role played by Retail Money Market Limited (trading as RateSetter) in facilitating a finance agreement between him and a third party.

What happened

I set out what happened leading up to and in the course of Mr M's complaint in my provisional decision, which I issued earlier this year. To make this decision easier to read though I will go through this background again here.

In August 2016 Mr M entered into a finance agreement. Under this agreement Mr M borrowed the sum of £24,500 to be paid back over a period of 60 months. The monthly repayments were £524.21

RateSetter is not a lender in this complaint. Rather it operated an electronic system in relation to lending which Mr M used to find a lender. In other words, RateSetter provided a platform to facilitate lending between Mr M and the lender who ultimately lent to him. This lender is a third party who I will call "R". R is not a party to this complaint.

Mr M has said this about his complaint *"between February 2016 to February 2017 I was in the grip of a crippling gambling addiction. I was able to borrow within that period over £50,000 [from various lenders]. I believe I should never have been able to borrow the money I did, and it was irresponsible lending on behalf of those companies. One of which was RateSetter [it] must have been able to do appropriate checks and see what was happening."*

Mr M has brought separate complaints about the other companies who he holds responsible for his situation. However, I am not looking at those other separate individual complaints in this decision.

Specially in regard to RateSetter, Mr M suggests that if RateSetter had asked to see statements from one of his bank accounts it would have realised he had a gambling problem.

Further, as a consequence of what Mr M's sees as the irresponsible actions of RateSetter, in facilitating his finance agreement with R, Mr M says he experienced a number of adverse events. He tells us he was already having money trouble before August 2016 but after this due in part, to this new lending he experienced financial difficulties, which in his opinion, then led to him entering into an Individual Voluntary Arrangement ("IVA") with some of his creditors. The finance agreement with R was covered by the IVA.

Moreover, Mr M talks of almost losing his home and the ending of his marriage which he also attributes, in part, to the money he borrowed and then gambled away.

Mr M seeks compensation for what he views as the impact of the borrowing, which RateSetter facilitated, on his life which he describes as being *"catastrophic"*.

Mr M complained to RateSetter about all of this.

In response, RateSetter indicated that it had three main considerations when it looked at

M's application, affordability of any prospective finance, Mr M's credit score and his past credit history. It also indicated that it takes into account many factors including the information that Mr M supplied in his application and any previous applications, and information about Mr M held by third parties, such as credit reference agencies.

According to RateSetter, Mr M had a good credit history, in particular he had no missed payments. Moreover, it suggested it verified his income "*electronically*". It added none of the information Mr M provided suggested that Mr M would have difficulty repaying the finance he wanted from R.

For all of these reasons RateSetter did not agree that its actions in helping Mr M obtain finance were inappropriate.

Dissatisfied, Mr M came to our service.

Once Mr M's complaint was with this service RateSetter provided more information. It told us that Mr M told it the purpose of this finance was debt consolidation. Specifically, he mentioned that he wanted to pay off a loan with a balance of £19K and two credit card balances, one of £7,000 and one of £2,000. It added that it checked Mr M's individual and household income using a third party's income verification tool. That tool according to it, showed that the information Mr M had given about his income was likely to be correct.

I looked into Mr M's complaint. As I have already mentioned I issued a provisional decision. Here is what I said in that decision about what I had 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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Why I don't think RateSetter met its obligations when it came to the checks it carried out
When RateSetter operated an electronic system in relation to lending by R to Mr M under a peer-to-peer agreement ("P2P agreement"), it was a regulated firm. This meant it had to follow the relevant regulations at the time for this activity. The regulations in August 2016 were different to the current regulations, it is those regulations that were current in August 2016 that I am referring to here.

In brief, under those regulations RateSetter had to make sure it carried out an assessment of the creditworthiness of the prospective borrower, that is Mr M. In particular, it had to consider the potential for the commitments under the P2P agreement to adversely impact the prospective borrower's financial situation, taking into account the information of which the business was aware at the time the P2P agreement was to be made. It also had to take account of the prospective borrower's ability to make repayments in a sustainable manner for the entire duration of the agreement.

Further, RateSetter had to carry out other regulatory obligations to the same extent as if it was the lender. In particular, amongst other things, it had to put in place clear and effective policies and procedures to make a reasonable creditworthiness assessment. RateSetter was obliged to take account of relevant information when making this assessment.

Moreover, it needed to take steps to ensure that information was complete and correct. The extent and scope of the assessment had to be dependent upon and proportionate to factors which might have included:

- The type of credit
- The amount of credit
- The cost of credit
- The financial position of the prospective borrower at the time of seeking the credit.

Also, RateSetter was also obliged to take account of obligations that were relevant to lenders (even though it was not a lender) and use that as guidance. The guidance indicated amongst other things, the factors it might consider when deciding if its assessment was proportionate.

Mr M was seeking thousands of pounds of unsecured credit payable over a fairly long period of time and the monthly repayments were substantial in the context. Moreover, RateSetter was aware that Mr M was also servicing various pre-existing debts prior to his application, including the debt he talked about consolidating. Further still, the debts Mr M wanted to consolidate were not his only unsecured debts, RateSetter was aware of this because it had a copy of his credit file. Also, the balances he told it about (that is £19,000, £7,000, and £2,000) that he said he wanted to clear, did not tally with the actual balances for those accounts. RateSetter ought to have known this too as its own records show it had this information. RateSetter has not shown that by consolidating the debts Mr M would actually have been in a better position financially.

In these circumstances I think it would have been proportionate to look at Mr M's actual income and outgoings as part of the creditworthiness assessment and the assessment of Mr M's ability to repay any new borrowing in a sustainable manner. I also think it would have been proportionate given the size and timing of the credit that Mr M had taken out in the last twelve months and all the other issues I have mentioned above to ask further questions about this borrowing.

I appreciate that RateSetter tells us it tested what Mr M told it about his sole income through independent means. RateSetter did not check Mr M's outgoings, it would appear, so it hard to see how it could have known with any degree of certainty that Mr M's outgoings were at such a level that he still had enough income to make the repayments. RateSetter has talked about Mr M's household income but it has not shown that it checked anything in relation to Mr M's partner who contributed to the household income. It is not clear how it was able to accurately assess his household income and outgoings without checking out Mr M's partner's situation.

Moreover, the level of long-term new debt that Mr M took out in the twelve months immediately before Mr M came to RateSetter for yet more finance might reasonably have caused it to ask more about Mr M's financial situation.

The upshot of [all of] this was his overall borrowing, on the face of it, appears to have to have been increasing rapidly which does not fit with the profile of a person who is trying to consolidate and ultimately paydown debt.

It may be the case that Mr M had not missed payments or made late payments to his pre-existing debt in the 12 months prior to taking out the finance agreement with R. That does not necessarily mean Mr M was maintaining these repayments in a sustainable manner. Indeed, Mr M suggests he was very much in a robbing Peter to pay Paul situation. The timing and the amount of Mr M's new debt suggests this was so. In any event, at the very least I find a reasonable operator of an electronic system in relation to lending under a P2P agreement would have asked more about this aspect of Mr M's financial life.

For all of these reasons I don't think that RateSetter did meet its regulatory obligations to carry out appropriate checks to establish if it was likely Mr M would be able to sustain his repayments without adversely impacting on his financial situation.

Affordability

That being said, it would not fair or reasonable to say RateSetter had to take the corrective action Mr M asks for just on the basis of what I have found above. Rather, I have to also be satisfied that if RateSetter had taken all the steps it should have done it would have found that Mr M could not afford to take out the P2P agreement with R or that it would be irresponsible to introduce him to a lender for some other reason. To this end I have taken a look at the information I have got about Mr M's wider financial situation at the time that he made his application to RateSetter.

As far as I am aware, Mr M had two current accounts – [namely] a sole current account and a joint current account, no savings accounts, and a joint mortgage account. I only have information about Mr M's sole current account.

The difficulty for Mr M here is that in order to make a finding about his financial situation at the relevant time and whether the finance was affordable, I would need information about his joint account[s] too. I don't have that information.

Moreover, normally, if lending is unaffordable I'd expect to see that the consumer missed his initial payments. I have seen nothing to suggest this is the case here.

It follows from what I have said above that I can make no finding therefore that the lending that RateSetter facilitated was not affordable.

Irresponsible lending

However, Mr M suggests that his complaint is primarily about irresponsible lending due to his problem gambling, rather than about affordability. Even a cursory examination of the information I have about Mr M's sole current account shows that he was gambling.

Moreover, I think given the degree and impact of the gambling fits the broad definition of problem gambling i.e. gambling that was disruptive or damaging to Mr M. I'm satisfied that if RateSetter had done all the checks it should have done it would have seen this and I am also satisfied that neither RateSetter nor any responsible firm carrying out the regulated activity that RateSetter was carrying out would have progressed Mr M's application in these circumstances.

Redress

When I look at redress I can't look at the situation in isolation rather I have to look at the wider overall picture. In this particular instance that means I have to look at the redress or concessions that Mr M has already had in order to decide what redress, if any, RateSetter ought fairly to be asked to pay.

Generally, this service would say that if a consumer had the use of the capital he should have to pay it back. This is the approach I think is fair and reasonable in this particular instance. Even if, as here, the consumer, Mr M says that he gambled all the money away.

However, under the terms of the IVA it appears that Mr M was treated as having settled the debt even though from the information I have seen he or rather his parents on his behalf, short settled the debt. That is R accepted much less than it was owed.

RateSetter has told us Mr M paid approximately £5,242.10 towards his debt before it was sold to a third party. It is not clear if this figure was the amount of capital he repaid, or the amount Mr M paid overall. On the face of it he has already had a substantial discount towards the capital he had to pay off. When I take into account the overall situation I don't agree it is fair or reasonable to say that in addition to this RateSetter ought to refund any interest and charges that Mr M paid in relation to the P2P agreement, plus interest on that refund.

As far as I am aware, the finance agreement has been marked as settled. If this is not the case I will look again at this point in my next decision. But to manage Mr M's expectations,

RateSetter is not the debt owner so it cannot tell the credit reference agencies to change the information they might have registered about the finance agreement. But if I were to be satisfied this is necessary I could require RateSetter to help Mr M ask R to remove any negative information it may have asked the credit reference agencies to register on his credit file. To be clear marking a debt as settled is not negative information."

I invited both RateSetter and Mr M to respond to my provisional decision should they wish to. Both parties responded.

RateSetter told us it had nothing further to add to the complaint.

Mr M responded at greater length. Mr M rejected the provisional decision. In summary, Mr M thanked us for my provisional decision. Mr M explained how emotionally difficult it has been and still is, to deal with his complaint and why that was. He also told us about the impact this has had on his mental health.

Further, Mr M reiterated points he had made before about taking into account his pre-existing debt RateSetter ought not to have arranged for him to be put in touch with R so he could borrow from it. Moreover, Mr M pointed out that he had borrowed a large sum of money from R. He also suggested that RateSetter had no reasonable grounds for thinking that he applied to it because he wanted to consolidate debts. He reiterated that RateSetter ought reasonably to have known about his problem gambling.

Further, Mr M repeated points he had made before about why he blames RateSetter, amongst others, for the adverse events in his life. He also repeated that his parents made the payment that settled his IVA.

Mr M mentioned his credit file from 2018 of which we have a copy. He told us if we looked at his 2018 credit file information we would see that RateSetter had registered a default against his account and he wanted this removed. He underlined he wants his voice to be heard and his concerns understood.

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 thank Mr M for his very candid response to my provisional decision. And I don't underestimate how upsetting he has found it to go over a period of his personal history that he finds painful. We would not have asked about any of this if had not been strictly necessary to investigate his complaint. I also can well understand why he wants his voice heard and his concerns understood, he is entitled to expect that from this service. I wish to reassure him I have heard his voice and thought about his concerns, just as I have done for RateSetter.

I've reviewed the complete file again, revisited my provisional decision thought about what the parties has said in response to my provisional decision.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I'll deal with the points that Mr M raised in response to my provisional decision.

Mr M makes a point about his previous lending and why that should have made RateSetter realise it ought not to proceed. He has also commented on the amount of money he borrowed. All this is relevant to whether RateSetter carried out an appropriate assessment

before it went ahead. The same goes for his point about whether RateSetter had proper grounds for thinking he wanted to consolidate his debt.

However, I don't need to go over any of this again. I say this because I have already found in my provisional decision that RateSetter did not carry out a proportionate assessment, based on sufficient information, of whether Mr M could afford to repay the P2P agreement with R in a sustainable manner. In addition, I also found that it was irresponsible of RateSetter to proceed given what it ought to have known about Mr M's problem gambling. It seems that RateSetter now accepts these findings, so they are not in dispute.

Mr M mentions why he thinks that RateSetter ought to have been aware of his problem gambling. But again, in my provisional decision I already found that RateSetter ought to have been aware of Mr M's problem gambling. RateSetter seems to have accepted this finding. So, this point too has already been dealt with.

I don't doubt that it was very tough indeed for Mr M when his marriage broke down, he almost lost his house and he entered into the IVA. Although I just don't have enough detail about any of this especially the reason for entering into the IVA to be able to say that is fair or reasonable to say RateSetter caused these events and therefore RateSetter must take responsibility for the impact of these events.

Moreover, it remains the case that Mr M was able to short settle the debt with RateSetter and therefore did not ever pay off a substantial part of the capital. It does not help his position that his parent's settled the IVA because this means a third party (namely his parents) not he made the financial loss in relation to the IVA settlement. I say this because nothing Mr M tells me suggests he repaid his parents. I don't say this to upset Mr M still further, far from it. But I must look at the whole picture when deciding what redress is appropriate.

I can see that a default and late/missed payments have been marked on Mr M's credit file in relation to the P2P agreement. I find as I did in my provisional decision that it is fair and reasonable that RateSetter must do what it reasonably can to get this information removed. The difficulty here is that R is the lender not RateSetter, as far as I am aware only R can ask the credit reference agencies to remove this information. R is not a party to this complaint so I can't require it to do anything. But I think RateSetter must take reasonable steps to help Mr M ask R to do this. Further, if Mr M wants to add a notice of correction, for example to give details about the findings in this decision RateSetter must help him to do that too and RateSetter must reimburse the costs Mr M incurs with the credit reference agencies (if any) in getting this done. Once the information has been updated RateSetter also reimburse Mr M for the costs he has to pay the credit reference agencies to get a copy of his credit file. This is so he can see what his up-to-date credit file says without having to pay for this himself. It follows that I have come to the same conclusions for the same reasons as I set out in my provisional decision and also for the additional reasons I have set out in this final decision.

My final decision

My final decision is that Retail Money Market Limited (trading as RateSetter) must take reasonable steps to assist Mr M to ask R to ask the credit reference agencies to remove the negative information it has asked them to register on Mr M's credit file about the P2P agreement. It must also help Mr M if he wants to add a notice of correction about the agreement to his credit file. It must also reimburse the costs that Mr M incurs with the credit reference agencies in getting this done. Once the credit file information has been updated it

must also reimburse Mr M for any fee he has to pay the credit reference agencies to get a copy of his credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 15 April 2022.

Joyce Gordon
Ombudsman