

## **The complaint**

Mr S complains Retail Money Market Ltd, trading as Ratesetter, are holding him liable for a loan he says he didn't apply for.

## **What happened**

In July 2018, a loan was taken out in Mr S's name for £25,000. Mr S says he didn't take this loan out.

Mr S ran a business and a customer, who I'll refer to as Mr X, owed him around £6,000 from 2017. One day, Mr X got in touch with Mr S and let him know he could pay his money back. Mr X said he was in another country and payments over a certain amount take longer to clear from that country – he also informed Mr S that his vehicle was stuck at the border crossing and he needed to pay some money for that. So, Mr X asked Mr S if he could transfer him £25,000; and Mr S could then keep his £6,000 and transfer £19,000 back to Mr X's account in smaller transactions. Mr S agreed.

Mr S received a payment of £25,000 into his account on 23 July 2018. He transferred £19,000 into Mr X's account in smaller transactions. £6,000 was retained by Mr S. Later in the year – around October 2018, Mr S noticed a direct debit payment being made from his account to Ratesetter. Mr S said it was at this point he realised what had happened – and after speaking to Mr X, says Mr X admitted he had taken out the loan in Mr S's name.

Mr S contacted Ratesetter and explained the situation. Mr S also provided Ratesetter with Mr X's name and contact details confirming he'd admitted what he had done and was willing to pay back £19,000. Mr S paid Ratesetter back the £6,000 he retained.

In December 2018, Mr S reported the issue to Action Fraud and the Police. During this month, Mr X also tried to contact Ratesetter directly; but as he wasn't associated with the loan, they wouldn't talk to him.

Ratesetter didn't uphold Mr S's fraud claim and continued to hold him liable for the debt. Mr S refused to make any payments towards the debt – because he didn't take it out. Ratesetter sold the debt to a third party to recover the monies owed.

Our investigator upheld Mr S's complaint. She was satisfied that information within the loan application – such as the telephone number and email address – was incorrect and not linked to Mr S. And as Mr X had admitted that he'd taken out the loan in Mr S's name and said he'd pay Ratesetter the £19,000, she upheld Mr S's complaint. To put things right, our investigator thought Ratesetter should:

- Remove the outstanding debt from Mr S's name and credit file;
- Pay Mr S back the £6,000 he paid; as Mr S was owed this money by Mr X;
- Pay 8% interest on the £6,000.

Ratesetter responded to our investigator's view and didn't agree. They said they weren't willing to reimburse Mr S with the £6,000 as that would mean he would benefit from the loan funds. Ratesetter also wanted to know the outcome of the Action Fraud and Police report.

As an agreement couldn't be reached, the complaint has been passed to me to review.

In January 2022, I issued a provisional decision. In it, I said;

*I don't think Ratesetter should hold Mr S liable for the loan. But I don't think they should pay Mr S back the £6,000 he returned to them. I've explained further below.*

*Did Mr S apply for the loan?*

*Section 83 Consumer Credit Act 1974 outlines that a debtor under a regulated consumer credit agreement shall not be liable to the creditor for any loss arising from the use of the credit facility by another person not acting, or to be treated as acting, as the debtor's agent. In simple terms, Mr S can't be held liable for a debt that another person, not acting on his behalf, took out.*

*Taking the above into consideration, I must first conclude—on the balance of probabilities—whether the loan was applied for by Mr S, or an agent acting on his behalf.*

*Based on the evidence I've received I think it's more likely than not, Mr S didn't apply for the loan himself; and I don't think he gave Mr X to apply for it on his behalf. I say that because:*

- While the loan application held some of Mr S's correct personal details, this information would have been easily accessible. Mr S also admitted he gave Mr X his bank details to allow him to transfer the £6,000 Mr X owed.*
- I haven't seen any evidence to show that Ratesetter carried out checks to confirm the employment and salary details were correct. I also note from the application the time in employment confirms 0 years, 0 months so I would have expected this to have flagged on Ratesetter's systems.*
- Mr S has given a consistent and persuasive version of events of how he came to receive the money in the account. Mr X told Mr S a plausible story as to why he had to transfer him £25,000 and Mr S had no reason to disbelieve Mr X.*
- Mr S transferred majority of the money – less the amount he was owed by Mr X – shortly after receiving them into his account. This makes Mr S's story more plausible. I say that because in light of the reasons he was given by Mr X for making the payments, I'm persuaded that Mr S wouldn't have sent the loan funds to the fraudster had he not received it into the account first.*
- The phone number and email address used on the application didn't belong to Mr S so I'm satisfied Mr S wouldn't have been aware a loan had been taken out in his name.*
- As soon as Mr S did become aware of the fraud, he contacted Ratesetter. Mr S also raised a case with the Police and Action Fraud. These are actions I would expect to see of somebody who had fallen victim to identity theft.*
- I've seen screenshots of conversations between Mr S and Mr X where Mr X confirms he will pay back the £19,000 to Ratesetter. I find it unlikely Mr X would do this if Mr S had agreed for him to take the loan out in his name.*
- Mr X also tried to contact Ratesetter directly about the loan – but they refused to talk to him. I think this supports Mr S's version of events even further.*
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*Based on all of the evidence I've received, I think it's more likely than not Mr X applied for the loan in Mr S's name – without his knowledge. Mr X was able to do this due to knowing*

*Mr S for a number of years and knowing a lot of his personal information. Mr S also supplied his bank details to his friend, Mr X, and I'm more persuaded that Mr S's testament that he thought he was helping a friend was true. This isn't unfamiliar when dealing with complaints involving fraud.*

*Considering all the above information, I'm satisfied that Mr S neither applied for, nor agreed to, the loan in question. I do recognise he benefited from some of the loan funds - £6,000 but as he has paid that amount back to Ratesetter, I don't find he should be liable for any of it.*

*How should Ratesetter put things right?*

*Ratesetter should put Mr S back into the position he would have been in, had the loan not been approved. While I recognise Ratesetter shouldn't be held liable for Mr S trusting Mr X, I think they should be held liable for not carrying out sufficient checks. If Ratesetter had investigated and verified Mr S's income or employment details, I think it's unlikely they would have approved the loan – and therefore Mr S wouldn't have found himself in this position.*

*Because of that, I think Ratesetter should remove any adverse data from Mr S's credit file – and ask the third party who they have sold the debt, to stop pursuing Mr S for the funds. Ratesetter should therefore write off the remaining loan amount and refund Mr S any direct debit payments he'd made towards it (if any).*

*I appreciate our investigator thinks Ratesetter should reimburse Mr S the £6,000 he paid to them towards the loan – but I disagree. While I appreciate Mr S was owed £6,000 by Mr X, I can't fairly hold Ratesetter liable for that. If Mr S is owed that money by Mr X, he should pursue him directly for it. It wouldn't be fair for Mr S to benefit from money from a loan he says he wasn't party to. So, if Ratesetter were to pay this money back to Mr S, he would be liable to repay this debt to Ratesetter. I appreciate this leaves Mr S without £6,000 which he is entitled to by Mr X – but that's not something I can fairly ask Ratesetter to pay.*

*I do, however, think Mr S is owed some compensation for the distress and inconvenience this situation has had on him. Mr S was honest with Ratesetter about what had happened, and Mr X even tried to contact Ratesetter himself to make repayment. Despite this, Ratesetter continued to chase Mr S for repayment for a loan he didn't apply for. Because of this, I think they have caused Mr S a significant level of stress and anxiety.*

*So, I thought Ratesetter should:*

- Remove any data from the credit reference agencies in relation to this loan,
- Write off the remaining amount of the loan,
- Pay Mr S £500 compensation for the distress and inconvenience caused.

*Mr S responded. In summary he agreed he didn't want the £6,000 back and said he will pursue Mr X directly for that money. But he did say he wanted compensation for:*

- Ratesetter allowing Mr X to take a loan out in his name without doing due diligence.
- Ratesetter causing him a great deal of stress and anxiety.
- Spending around 50 to 100 hours trying to sort this issue out.
- The difficulties and obstacles faced when trying to continue to run his business.
- The impact having a default on his credit file caused.

*Mr S shared details of finance agreements he took out since this issue happened, and the difficulties he faced when trying to open them due to the information on his credit file.*

*Ratesetter responded and had nothing further to add.*

## **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've carefully considered everything Mr S has provided to our service – and the effects this overall situation had on him as an individual. I do feel the £500 compensation which I referred to in my provisional decision is a fair amount to reflect what's happened. Combined with the removal of data on Mr S's credit file linked to this loan, and writing off the remaining amount, I believe fairly puts Mr S back in the position he would have been in. I'm pleased to hear Mr S accepts why it's not appropriate to ask Ratesetter to pay him back the £6,000 and why he should pursue Mr X directly for this amount.

I appreciate Mr S would likely want more than this amount, but I must explain to him that our awards are not designed to punish a business or to make them change the way they act in order to protect other customers in the future. That is the role of the regulator – the Financial Conduct Authority.

## **Putting things right**

Ratesetter should put Mr S back into the position he would have been in, had the loan not been approved. Ratesetter should remove any adverse data from Mr S's credit file – and ask the third party who they have sold the debt, to stop pursuing Mr S for the funds. Ratesetter should therefore write off the remaining loan amount and refund Mr S any direct debit payments he'd made towards it (if any). And they should pay Mr S a total of £500 compensation for the distress and inconvenience caused to him.

## **My final decision**

For the reasons explained above, and in my provisional decision, I uphold this complaint. To put things right, Retail Money Market Ltd, trading as Ratesetter, should:

- Remove any data from the credit reference agencies in relation to this loan,
- Write off the remaining amount of the loan,
- Pay Mr S £500 compensation for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 27 April 2022.

Hayley West  
**Ombudsman**