

The complaint

Mr P is unhappy Retail Money Market Ltd, trading as RateSetter, loaded a fraud marker against his name on the Cifas database.

What happened

Mr P discovered after taking out a loan with RateSetter that a fraud marker had been placed against his name as it was having a detrimental impact on him. After application to Cifas, he discovered that the marker was placed for obtaining a loan and evading the repayment of it.

Mr P made a complaint to RateSetter disputing this. He said that he'd previously held a loan with it and fully made repayments. He also highlighted that he was experiencing severe financial difficulties at the time of the loan subject of the Cifas marker, and this eventually led to bankruptcy.

RateSetter looked into the circumstances of Mr P's complaint but didn't agree it'd made an error. Mr P, unhappy with this response, brought his complaint to our service to be looked into again.

An Investigator looked into the evidence and testimony provided by both parties but didn't agree RateSetter had acted fairly. They recommended that RateSetter remove the Cifas marker held against Mr P's name.

RateSetter disagreed with the Investigator's assessment and recommendation. It reiterated that it'd loaded the marker at the time correctly and provided evidence from Cifas that the loading appeared to meet the threshold required.

As RateSetter disagreed with the Investigator's assessment, the matter has now 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.

The marker that RateSetter have filled with Cifas is intended to record that there's been a 'misuse of facility'. Here, RateSetter has claimed that Mr P opened a facility—in this instance a loan—for a fraudulent purpose. It says that the fraudulent purpose was to evade repayment of that loan. In short, Mr P opened the account with the intention of not repaying it.

In order to file such a marker, RateSetter is not required to prove beyond all reasonable doubt that Mr P is guilty of fraud, but it must show that there are grounds for more than mere suspicion or concern. As part of its evidential requirements, Cifas says:

- *"There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*

- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

From the evidence provided by all parties, I don't think it's contested that RateSetter had sufficient information to initially load the marker against Mr P's name. He'd made one repayment of the loan, cancelled his direct debit and then failed to respond to a number of correspondences from RateSetter asking him to get in touch and resolve the repayments owed.

Mr P has admitted to ignoring these correspondences, so RateSetter were placed into a position where it was unaware of Mr P's personal circumstances and it appeared as if Mr P had taken out the loan and ceased repayments without reasonable excuse.

I find that at this point, RateSetter was correct in loading the marker and had satisfied the guidance set out by Cifas. But that isn't the end of the story.

Once Mr P had been made aware of the marker, he complained to RateSetter regarding it. It was at this point that Mr P made RateSetter aware of his personal circumstances at the time; that he was in severe financial difficulty and undergoing a number of personal challenges.

Mr P had a number of documents to support his testimony which he's provided to our service. He'd taken the loan out to consolidate a number of existing debts—not for personal gain—and has told our service that he buried his head in the sand as result of the growing pressure he was facing; hence why he'd not responded to requests by RateSetter to contact it. He's also evidenced that he was made bankrupt due to his circumstances some months after the loan had been initially taken out.

While the marker was initially loaded correctly, it was at this point that Mr P no longer satisfied the requirements set out by Cifas. He was in severe financial difficulties and couldn't afford to repay the loan. And this didn't later appear to be the actions of a person intent on defrauding a business when he'd finally decided to come forward and offer an explanation.

I think RateSetter could have used this opportunity to reconsider if it still had the evidence to fulfil the requirements set out by Cifas and retain the marker, rather than considering if it had placed it correctly at the time of loading. The testimony and supporting evidence had changed the circumstances in which the loading was originally made.

I've considered the evidence provided by Mr P and I'm persuaded he was in fact in the circumstances he's set out. He's sufficiently evidenced his financial difficulty and has provided a reasonable explanation for not engaging with the business at the time. I've also taken into consideration that a repayment was initially made – which also goes some way to show Mr P initially intended to repay the loan.

So, for the above reasons, I find that the first requirements set out by Cifas above can no longer be satisfied. I don't find that sufficient evidence can now be presented to support the fact that Mr P misused his facility by taking out the loan with the intention of not repaying it. And being unable to meet repayments due to financial difficulties should be dealt with as such rather than as an act of intentional fraud.

Putting things right

RateSetter should now go ahead and remove the Cifas filing placed against Mr P's name without delay.

I've considered if compensation is appropriate in this case for the impact the marker caused to Mr P, but I don't think it is in the circumstances.

While I understand why Mr P shunned attempts at contact from RateSetter when faced with mounting debts and pressures, it was this action that ultimately led to the marker being loaded in the first place and, ultimately, the impact caused by it. I therefore don't find it appropriate that RateSetter take responsibility where Mr P's actions were initially the cause of the impact.

My final decision

For the reasons I've given above, I uphold this complaint and direct Retail Money Market Ltd, trading as RateSetter, to remove the Cifas filing against Mr P's name.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 19 May 2022.

Stephen Westlake
Ombudsman