

The complaint

Ms R has complained that Retail Money Market Limited trading as RateSetter lent to her when it shouldn't have.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. The facts are not in dispute, so I'll focus on giving the reasons for my 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.

RateSetter is aware of its obligations under the rules and regulations in place at the time of this lending decision, including the Consumer Credit Sourcebook ("CONC"), so I won't repeat them here. But, briefly, it was required to carry out sufficient checks to ensure that Ms R would be able to repay the borrowing applied for in a sustainable way. As set out in CONC 5.3.1G(2) that means that he could manage the repayments,

"...without...incurring financial difficulties or experiencing significant adverse consequences"

RateSetter has said disagreed with the adjudicator because the loan was for consolidation purposes and that should have left Ms R with disposable income. However, the loan amount was for £4,000 and Ms R's outstanding debts, including car payments, credit card and overdrafts and loans were significantly higher than that.

There's no evidence of what Ms R was looking to consolidate specifically and that RateSetter thought about this consolidation and how it would have impacted Ms R's overall financial circumstances. Assuming Ms R consolidated her other loan, which had a balance of around £4,050, she'd still be left to around £610 monthly payments towards her other credit that won't have been consolidated including the repayment of this loan.

Ms R's income was recorded as £1,434.93 and she had to pay £649 towards her mortgage, so even without taking into account her other living costs and the fact she had two dependents at the point of the application, Ms R would only be left with £175.52 to cover her other living costs including supporting her two dependents. I think RateSetter should have known she was likely to struggle to repay the loan over the term and so it shouldn't have lent.

Ms R has been given a loan when she shouldn't have and while I think it's fair for her to repay the capital amount, she's paid interest, fees and charges on a loan she shouldn't have had and RateSetter needs to put this right.

Putting things right

To put things right for Ms R, RateSetter should:

- remove all interest and charges applied to the loan, and
- treat all payments Ms R has made as repayments towards the capital. If there's a surplus after doing the above, RateSetter should add interest at 8% per year simple on the surplus payments from the date they were paid, if they were, to the date of settlement†;
- if there's still a balance outstanding RateSetter should agree a suitable repayment plan with Ms R.
- RateSetter should remove any adverse information recorded on Ms L's credit file once the loan capital has been repaid.

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

My final decision

For the reasons given above, I'm upholding Ms R's complaint. Retail Money Market Limited trading as RateSetter should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms R to accept or reject my decision before 6 October 2022.

Oyetola Oduola
Ombudsman