

The complaint

Ms O complains Retail Money Market Ltd trading as RateSetter (RateSetter) unfairly arranged a loan which was unaffordable for her.

Ms O is assisted in this matter by representatives. But, for ease, I'll refer to Ms O throughout.

What happened

In June 2019, Ms O entered into a peer-to-peer loan agreement arranged by RateSetter. The loan was for £15,000 with an APR of 15.9%. The total amount payable was £19,994.88 over a term of 48 months. The monthly repayments were £416.56.

Ms O complained that the loan had been arranged irresponsibly. In summary, she said that at the time the loan was arranged, she was struggling financially and had a poor credit history.

RateSetter reviewed Ms O's complaint. It explained that it considered several factors such as reviewing credit profiles, credit history and affordability as well as information given in the application itself. Based on the information it had gathered, it didn't think it had arranged the loan irresponsibly.

Ms O remained unhappy with RateSetter's response, so she brought her complaint to this service. One of our investigators reviewed matters and thought that RateSetter had carried out proportionate checks into Ms O's circumstances. But she thought the decision it then made to facilitate the loan, based on what it saw from its checks, was irresponsible.

Ms O didn't disagree with our investigator's findings, but RateSetter did. In summary, it said its criteria was to use 45% of the applicant's net monthly income for credit commitments and use the remainder for the applicant's mortgage and other living expenses. Having done these calculations, it thought the loan was affordable and would leave Ms O with a surplus each month.

I contacted RateSetter informally and outlined that I was minded to uphold the complaint for broadly the same reasons as the investigator. I said I thought the checks it gathered would have indicated the loan was unlikely to be affordable or sustainable for Ms O. RateSetter disagreed with my thoughts and repeated its earlier points.

This service then contacted the parties informally to explain I was still minded to uphold this complaint for broadly the same reasons as the investigator. However, the redress outlined in our investigator's view would be amended to reflect that Ms O is currently in an Individual Voluntary Arrangement (IVA). This service then set out the recommended redress and allowed both parties time to come back with any comments. In summary, neither party provided any new information in relation to the redress change.

As an agreement couldn't be reached, the case has come to me to decide.

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 also taken on board all of RateSetter's comments in response to my informal email before coming to my decision.

The rules and regulations in place at the time Ms O was provided with the loan, required RateSetter to carry out a reasonable and proportionate assessment of whether Ms O could afford to repay what she owed in a sustainable manner. This is sometimes referred to as an 'affordability assessment' or 'affordability check'.

The checks had to be 'borrower' focused. This means RateSetter had to think about whether repaying the credit sustainably would cause difficulties or adverse consequences for Ms O. In other words, it wasn't enough for RateSetter to consider the likelihood of it getting the funds back – it had to consider the impact of any repayments on Ms O.

Checks also had to be 'proportionate' to the specific circumstances of the lending. In general, what constitutes a proportionate affordability check will be dependent on a number of factors including – but not limited to – the particular circumstances of the consumer (e.g. their financial history, current situation and outlook, any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they were seeking. I've kept all of this in mind when thinking about whether RateSetter did what it needed to before arranging a loan for Ms O.

From the information I've been provided with, RateSetter asked Ms O for information about her personal situation, the purpose of the loan and her income. Ms O told RateSetter that the loan was for home improvements. She declared her income as £15,000 per year, which was around £1,144.65 each month. RateSetter said it verified this information using a third-party and thought Ms O's income was likely to be what was outlined on the application.

RateSetter also asked about Ms O's monthly commitments. There were no other recorded credit commitments on the application form. It's unclear whether this is because Ms O stated that she had no other credit commitments, or whether these questions weren't answered. However, RateSetter didn't rely on this information from the application and instead reviewed Ms O's credit file to check this for itself.

RateSetter's check showed Ms O had balances of £2,270 in existing credit. Ms O therefore would've likely needed to pay around £113 towards her existing credit commitments, in order to ensure she was making sustainable repayments towards the facilities, and not including the repayments on the loan RateSetter arranged.

Ms O stated on the application form that she paid £350 each month towards her mortgage. However RateSetter's credit check indicated that she was paying slightly more towards this, at £375 each month. Ms O was also asked about household income on the application form, and she stated this was £15,000 – the same as her personal income. Ms O also said that she didn't have a partner at the time of the application. So, taking this into account alongside the information around the household income, I think it's reasonable to conclude that Ms O was solely responsible for making her mortgage payments, and therefore other household expenditure too.

Alongside the above, I've noted that RateSetter would have also been aware that the repayments on this loan were £416.56 each month, which alone is more than a third of Ms O's take-home pay. When considering this, alongside Ms O's mortgage and other credit

commitments outlined above, Ms O would have been left with around £240 each month to cover all her other expenditure – and this isn't even taking into account any household bills, food and other monthly commitments or living costs. With this in mind, I think RateSetter should've known from the information it gathered that Ms O would've struggled to repay this loan and that it wasn't sustainable for her to maintain repayments towards.

I note RateSetter has said it considers that 45% of an applicant's net monthly income would be used for credit commitments, with the remainder being used for the applicant's mortgage and other living expenses. Based on this, it calculated that the loan repayments were affordable as Ms O was left with a surplus each month. However I can't agree that in the circumstances of this complaint, Ms O would have been left with sufficient disposable income to live on. As outlined above, whilst Ms O would have likely been left with a surplus each month, I'm not persuaded that it would have been very much once also factoring in any other living expenses, aside from her mortgage, which hadn't yet been considered. So, overall, I'm persuaded that RateSetter shouldn't have arranged the loan for Ms O, and it needs to put matters right for her.

Fair compensation – what RateSetter should do to put things right

I note Ms O is currently in an IVA. With this in mind, to put things right for Ms O, RateSetter should:

- Remove all interest and charges applied to the loan, and
- Treat all payments Ms O 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 that would have resulted in a balance due to Ms O, RateSetter should notify the insolvency practitioner who will determine how that balance should be distributed.
- Either way, once Ms O has repaid the sum due to RateSetter under the IVA, RateSetter should remove the loan payment data from Ms O's credit file.

**If Retail Money Market Ltd trading as RateSetter considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Ms O how much it's taken off. It should also give Ms O a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate*

My final decision

For the reasons outlined above, I uphold this complaint and direct Retail Money Market Ltd trading as RateSetter to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms O to accept or reject my decision before 24 February 2023.

Hana Yousef
Ombudsman