

The complaint

Miss J complains about the response she received from Retail Money Market Ltd trading as RateSetter ("RateSetter") when she told it that two finance agreements she took out were unaffordable.

What happened

In June 2017 Miss J entered into a finance agreement with a third party limited company who I will call "V". Subsequently RateSetter bought V. Miss J borrowed £7,099 from V which was to be repaid over 48 months, the monthly payments were £306.19.

Under the finance agreement with V, Miss J was also supplied with a car. The car was involved in an accident. An insurance payment was made which was used to settle the agreement in part, however there was a shortfall of £1,600 remaining. Moreover, Miss J required a new car. Therefore in January 2018 Miss J entered into a new finance agreement with a group of third party lenders who I will collectively call "R". The shortfall was added to this new agreement and the 2017 agreement was fully settled. Miss J borrowed £10,320 which was to be repaid over 36 months, the monthly payments were £444.80. Again under this agreement Miss J was supplied with both finance and a car.

RateSetter was not a lender in relation to the 2018 finance agreement. Rather it operated an electronic system in relation to lending which Miss J used to find a lender. In other words RateSetter provided an electronic platform to facilitate lending between Miss J and R under a peer-to-peer agreement ("P2P agreement"). R is not a party to this complaint.

Miss J settled the 2018 finance in 2021. However, Miss J complains that both finance agreements were unaffordable, and she should never have been approved for the finance. In particular, she tells out that before she entered into each of the finance agreements she was struggling to make the repayments towards her pre-existing debts and also had County Court judgments against her for unpaid debts. Miss J's position is that that RateSetter ought to take responsibility for this unaffordable lending and therefore she wants all interest and charges to be refunded. Miss J complained to RateSetter.

RateSetter looked into Miss J's complaint. RateSetter's position is that the appropriate checks were carried out and neither finance agreement was unaffordable. To support its stance RateSetter set out the checks that had been done prior to each decision to lend. In particular, it said, before the 2017 agreement it carried out a credit search. It also asked Miss J to supply details of her income and expenditure which it said it verified. It then used electronic means to calculate if the finance was affordable. RateSetter added:

"When assessing any application, our underwriting team considers several factors including (but not limited to) Credit profile, credit history and affordability. Decisions are made based on information given in the application itself and obtained from various Credit Reference Agencies."

RateSetter indicated that Miss J had met its relevant internal criteria for the finance in 2017, that criteria ensured it met its regulatory obligations and it therefore did not agree that the finance was unaffordable.

As to the finance taken out in 2018, RateSetter said what it principally looked at when assessing Miss J's application on behalf of R, was affordability, Miss J's credit score and her

past credit history. To assess these factors, amongst other things, it looked at the data Miss J provided in the application form and cross referenced it with data it held already and data from the credit reference agencies. RateSetter indicated its checks were proportionate and because of those checks it concluded correctly that Miss J could afford to borrow.

It follows that RateSetter's ultimate stance is that there are no proper grounds for it to be asked to refund any interest or charges in relation to either finance agreement. Therefore it declines Miss J's request and does not uphold her complaint.

Dissatisfied with RateSetter's response Miss J complained to our service.

One of our investigators looked into Miss J's complaint. Once our investigator completed their investigation they did not recommend that Miss J's complaint be upheld.

We have no record of receiving any response from RateSetter to our investigator's recommendation, however Miss J rejected it. In summary, she reiterated her previous stance and laid particular emphasis on her payment history and on her other debts. Specifically, Miss J indicated that her payment history for both finance agreements showed she could not afford the finance. Further, she told us she prioritised paying this finance to such an extent that she was not able to make full payments towards her other debts. Miss J indicates that the knock-on impact of this is that she ultimately ended up with more County Court Judgments against her for these debts.

Miss J asked that an ombudsman review her complaint.

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.

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. Rather, 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. Miss J has indicated that she is concerned as she does not think all of the information she has sent us has been taken into account. She mentions in particular the information she sent in from February 2023 onwards. To put her mind at rest I confirm I have looked at all of this information.

Miss J and RateSetter disagree whether it acted appropriately in relation to the finance agreements. 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

RateSetter has acted in two separate capacities in this complaint. The first capacity is as a lender engaged in consumer credit lending in respect of the 2017 finance. I take on board that in reality at the time the lending was done by V not RateSetter. But in purchasing V RateSetter took over its responsibilities in respect of this finance. Therefore for ease of reading, I have written this decision as if RateSetter was always the lender in relation to this finance. The second capacity relates to the 2018 agreement, here RateSetter acted as a person operating an electronic system that facilitated persons becoming lenders and borrowers under P2P agreements. RateSetter had different responsibilities in each capacity so I will look at each agreement separately.

2017 Finance

When RateSetter lent to Miss J it was a regulated business providing regulated finance. That meant it had certain obligations to fulfil before it lent to her. Under the relevant regulations at that time, RateSetter was obliged to make sure that its lending was affordable and responsible. In particular, it was required to carry out checks that were proportionate in the circumstances, which might include considerations about the amount borrowed and Miss J's borrowing history.

That said, exactly what a lender should consider was for each lender to decide, however, the rules listed a number of factors which a lender such as RateSetter might have wished to take into account.

Further, RateSetter had to be able to demonstrate that it did enough to ensure that Miss J could repay the borrowing in a sustainable manner without it adversely impacting on her financial situation. I think there are some overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of this complaint. These questions are:

- Did RateSetter complete reasonable and proportionate checks to satisfy itself that Miss J would be able to repay the finance in a sustainable way? If so, did it make a fair lending decision?
- If not, would those checks have shown that Miss J would've been able to repay the finance in a sustainable way?
- Did RateSetter act unfairly or unreasonably in some other way?

If I come to the conclusion that RateSetter didn't act fairly and reasonably in its dealings with Miss J and that she has lost out as a result, I'll go on to consider what is a fair way to put things right.

As set out above, the regulatory framework required RateSetter to have carried out a proportionate assessment, based on sufficient information, of whether Miss J could afford to repay the loan with it in a sustainable manner. This affordability assessment needed to have sufficient checks to satisfy it that Miss J would be able to repay the finance sustainably, without the repayments having a significant adverse impact on Miss J's financial situation.

As I also mention above RateSetter told us about the checks it carried out. RateSetter indicated that, amongst other things, it had requested and reviewed information about Miss J from both Miss J directly and from credit references agencies, it looked at how her pre-existing debt had been managed by her and also it took into account debt to income ratios based on the data it gathered.

RateSetter tells us it asked Miss J to provide information about her income and expenditure and checked the information she'd provided against her bank statement from a third party bank I will call H. Miss J does not appear to dispute that RateSetter did this. To counter what RateSetter has provided, Miss J has sent us new income and expenditure information for November 2017 and a bank statement from a third party bank I will call "N". I note that the income she now says she had in November 2017 was substantially less than that which she said she had in June 2017. Although I also note the income for June 2017 was backed up by the statement from H, so I have no reason to doubt it was accurate. In any event, I don't think the income and expenditure information for November 2017 is relevant given the finance was taken out in June 2017.

Miss J indicates that she had multiple debts she was not servicing in June 2017 which RateSetter would have realised if it had done proportionate checks. Although she does not mention the same list of debts in either her income and expenditure form for June 2017 or November 2017. Rather in June 2017 she indicated she had debt repayments of £13.19 against an income of £1,527.21 and a disposable income £971.02.

However, finance companies are not meant to merely accept information from an applicant for finance, at face value although as a starting point, a finance company might reasonably expect a prospective borrower to give accurate information. It appears RateSetter did look at Miss J's other debts and past payment history both to cross reference what she told it but to also check whether Miss J would be able to make the repayments sustainably. And those checks showed a default within the last 12 months and a County Court judgment in 2016. Miss J has supplied information to show she had an additional County Court judgment in 2015 but nothing I've seen demonstrates RateSetter could reasonably have known about this.

Therefore the checks that RateSetter carried out did reveal some adverse information but that by itself, does not mean that RateSetter's checks did not go far enough. Rather I am satisfied that on balance RateSetter gathered sufficient information to gain an appropriate overview of Miss J's financial circumstances. It did enough to demonstrate that Miss J could repay the borrowing in a sustainable manner without it adversely impacting on her financial situation.

Overall, in the circumstances I find that the checks carried out were proportionate. Moreover given what RateSetter knew about Miss J's wider financial circumstances I find that the decision to lend was fair and it did not act unreasonably. It follows I don't have to look further than this at this part of Miss J's complaint.

2018 Finance

When RateSetter operated an electronic system in relation to lending by R to Miss J under a P2P agreement, it was a regulated firm. This meant it had to follow the relevant regulations at the time for this activity.

In brief, under those regulations RateSetter had to make sure it carried out an assessment of the creditworthiness of the prospective borrower, that is Miss J. 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, set out the factors it might consider when deciding if its assessment was proportionate. Bearing that guidance in mind, I am satisfied RateSetter ought reasonably to have taken into account that Miss J 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. Further still, the repayments under the 2018 agreement were over £100 per month than under the 2017 agreement. Moreover,

RateSetter was aware that Miss J was also servicing the balance of her pre-existing debt from the 2017 finance.

In general the fact that Miss J was seeking new credit to acquire a car in 2018 so soon after taking new credit for the same purpose in 2017 might have been a cause for concern but it was not here because the car funded by the 2017 finance had been involved in an accident and seemingly written off and RateSetter knew this, so this explained the timing of this new application.

According to RateSetter's records it looked at Miss J's credit score and past credit payment history. But it chose not to ask about or verify actual income and expenditure. I think in the very particular circumstances of this complaint it would have been proportionate to look at Miss J's actual income and outgoings as part of the creditworthiness assessment and the assessment of Miss J's ability to repay any new borrowing in a sustainable manner.

I appreciate that RateSetter tells us it assessed Miss J's income through independent means. RateSetter did not check Miss J's outgoings, it would appear, so it hard to see how it could have known with any degree of certainty that Miss J's outgoings were at such a level that she still had enough income to make the repayments especially taking into account what it already knew about Miss J's financial situation.

In the circumstances I don't think that the checks RateSetter carried out went far enough. But in order to uphold this complaint I also have to find that if RateSetter had done proportionate checks those checks would have shown that Miss J would have been unable to repay the finance in a sustainable way. So I've looked at this point.

I've got copies of Miss J's bank statements for the relevant period on the face of it given the relatively low outgoings that they demonstrate that Miss J had sufficient disposable income to comfortably cover the monthly repayments. I recognise that Miss J says that is not the case and she sent us new information about her income and expenditure that information does not appear to include all her income at the time, so I don't find it persuasive.

In any event Miss J indicates that her payment history towards this finance suggests the finance was unaffordable. What I'd expect to see if this was so would be that she was not able to make the initial payments as they fell due but that is not what the information I have got shows.

Miss J tells us she was not able to pay her other debts while she was making repayments to this debt but that is not what the information she sent us shows as it appears she was making payments to at least one of the debts. In any event those repayments were so low on the face of it she could have made those repayments at the same time as making repayments to the 2018 finance out her disposable income. She also has not explained why those debtors, according to her were willing to accept no payments between January 2018 and when the debt was settled.

Moreover Miss J tells us only once she paid off the 2018 finance did she have the money to pay these debts but in at least one case the amount she was repaying went down after she finished paying off this debt which contradicts her position on this.

The information I have about County Court judgments show historic judgments which because of their timing don't persuade me they could have been impacted by this finance. I've also seen information about a County Court judgment at least a year after she took out this finance and again the timing of that judgment does not persuade me that this finance was unaffordable and therefore led to the County Court judgment.

For all these reasons, I don't find that if RateSetter had done proportionate checks those checks would have shown that Miss J would have been unable to repay the finance in a sustainable way. It follows that I don't uphold Miss J's complaint.

My final decision

My final decision is that I do not uphold Miss J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss J to accept or reject my decision before 15 May 2023.

Joyce Gordon
Ombudsman