

The complaint

Mr G complains that Retail Money Market Ltd (“RateSetter”) unfairly reduced his interest returns on his crowdfunding investments and delayed in returning his money following his withdrawal requests.

What happened

RateSetter is a peer-to-peer crowdfunding platform which was acquired by TP in September 2020. However, for ease, I shall refer to both parties separately throughout this decision.

RateSetter provided several types of investment accounts in which investors could lend money to third party individuals and/or businesses in return for interest. While each of these accounts had a set “Going Rate” - a market interest rate determined by RateSetter - investors could also decide to set their own target interest rates. The actual interest earned was based upon the loan contracts contained within an investor’s account.

RateSetter operated a contingency fund called the “Provision Fund”. The Provision Fund was used to automatically reimburse investors their outstanding capital and interest in the event this wasn’t paid by a borrower. This in effect mutualised risk for all investors by diversifying their exposure across the entire loan portfolio. Although payments from the Provision Fund weren’t guaranteed, payments would be made provided there were sufficient funds available in it.

The adequacy of the Provision Fund was expressed by the “Interest Coverage Ratio” - calculated by dividing the size of the Provision Fund by the “Expected Future Losses” (the total amount of missed and unrecovered borrower repayments expected over the lifetime of active loans). RateSetter also published a “Capital Coverage Ratio” - calculated by adding the size of the Provision Fund and all the future interest from active loans and then dividing by the Expected Future Losses.

Historically, the Provision Fund was funded through borrowers as part of their loan fees and not by investors. But RateSetter says that, due to the impact of the Covid-19 pandemic, it saw a decrease in new lending and in turn, a decrease in borrower fees going into the Provision Fund. RateSetter has told us that in April 2020 the Interest Coverage Ratio had dropped below 74% and in May 2020, in response to this, it introduced a “Stabilisation Period” – a 50% reduction to the interest rate investors received on their investments. RateSetter says that was introduced to replenish the Provision Fund. It also says the Capital Coverage Ratio was around 154% at the time and so a capital rate reduction wasn’t necessary. RateSetter says this was all implemented in line with the terms of the investment. TP acquired RateSetter in September 2020, but the entire loan portfolio remained with RateSetter. RateSetter has explained that the Interest Coverage Ratio had returned above 100% by December 2020 and the Stabilisation Period ended in January 2021. In February 2021 RateSetter announced that TP was acquiring the entire loan portfolio which then completed in April 2021. As a result, investors received their capital back, plus any interest due.

Following the introduction of the Stabilisation Period, Mr G requested to make withdrawals from his investment in June and July 2020.

Mr G complained to RateSetter in July 2020 as he was unhappy with the delay in completing his withdrawal requests. He also complained about RateSetter's decision to reduce his interest rate. He said it was unfair for it to do so when it was still charging borrowers the same amount. He felt that it was only RateSetter that was benefiting from the interest rate reduction.

RateSetter considered Mr G's complaint but didn't uphold it. In summary, it said:

- Since the Covid-19 pandemic struck, it had focused on strengthening the Provision Fund and protecting all investors equally.
- The interest rate reduction introduced in May 2020 was a necessary part of ensuring that all investors were fully protected – and a necessary step towards the outcome of investors getting their money back in full in April 2021.
- Had it not increased its Provision Fund, investor capital would have been at risk.
- Mr G's withdrawal requests were in a queue to be released which was subject to the liquidity in the market at the time – as per the terms of the investment.

Mr G remained unhappy with RateSetter's response and so he referred his complaint to this Service for an independent review.

An investigator at this Service looked into Mr G's concerns and originally upheld the complaint but later revised her view based upon new information provided by RateSetter. In summary, she said:

- She felt RateSetter had made it clear to Mr G in its Investor Terms that his ability to withdraw was dependent on there being liquidity in the market.
- There was clearly an imbalance in supply and demand caused by the reaction to the Covid-19 pandemic, with reduced demand on the secondary market. So, she didn't think it was unreasonable that it took longer than normal for RateSetter to process Mr G's withdrawal requests.
- She was satisfied that RateSetter's Investor Terms gave it a broad discretion to introduce the Stabilisation Period.
- She was persuaded that RateSetter's decision to implement the Stabilisation Period was fair, and consistent with maintaining the Interest Coverage Rate above 100% to ensure continued mutualisation of risk across the loan portfolio.
- She also commented on RateSetter's decision to close Mr G's account following the sale of the entire loan portfolio to TP. She felt RateSetter had the power to do so under the Investor Terms and she felt that, by receiving a return of his capital and interest accrued up to that point, Mr G had received what he was entitled to.
- RateSetter had accepted that it delayed providing all available evidence for the complaint and had it not done so, she wouldn't have reached the same outcome as she did in her initial opinion. She said RateSetter had offered £250 in recognition for the unnecessary delay caused and any distress and inconvenience caused by this, which she felt was fair and reasonable in the circumstances.

Mr G didn't accept the investigator's findings. In summary, he said:

- It's unacceptable that RateSetter moved from a position of paying out withdrawals usually within 24 hours to months.
- Whilst the possibility of being unable to withdraw money was highlighted to investors, it wasn't what he'd previously experience and, as a result, expected.

- RateSetter changed its terms retrospectively and these changes ultimately protected and benefitted RateSetter.
- He remained of the opinion that it was unfair to apply an interest reduction to all his loans.

As no agreement could be reached, the complaint has been passed 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.

When considering what is fair and reasonable in the circumstances, I've taken into account the relevant rules and regulations FCA regulated firms, such as RateSetter, are required to follow. These are set out in the FCA's Handbook of rules and guidance. The FCA Principles for Business ("PRIN") "are a general statement of the fundamental obligations of firms under the regulatory system" (PRIN 1.1.2G) The Principles themselves are set out in PRIN 2.1.1R. The most relevant principles here are:

- PRIN 2.1.1R (2) "A firm must conduct its business with due skill, care and diligence."
- PRIN 2.1.1R (6) "A firm must pay due regard to the interests of its customers and treat them fairly."

RateSetter was also required to act in accordance with the rules set out in the Conduct of Business Sourcebook (COBS). And the most relevant obligation here is:

- COBS 2.1.1R (1) "A firm must act honestly, fairly and professionally in accordance with the best interests of its client."

Withdrawal delays

I appreciate that Mr G is unhappy with the amount of time it took for RateSetter to complete his withdrawal requests, especially considering he'd been accustomed to withdrawals only taking hours prior to the outset of the Covid-19 pandemic. However, having reviewed the information provided to him at the time of investing on the platform, I'm satisfied RateSetter made him aware that his ability to withdraw from the investment was dependent on liquidity of the market he was invested in.

Some platforms (including RateSetter) have put in place secondary markets that allow investors to sell their loan parts to other investors in order to withdraw funds. There is no regulatory requirement on platforms to have this facility available. And it follows that there are no rules dictating how these secondary markets should be run. Ultimately, how RateSetter decided to process withdrawal requests was a commercial decision which it's entitled to make. This isn't something this service can change. Instead I've looked at whether Mr G has been treated unfairly as a result of that decision.

RateSetter's Investor Terms explained:

"8.3. If your funds have already been matched to a loan contract, you can only withdraw them using the Release Investment function detailed below.

9. The "Release Investment" function

9.1. Once your funds are matched and a loan contract is formed, you may be able to withdraw matched funds before they are repaid by the borrower by using the "Release Investment" function, but this will only be possible where there are sufficient funds available in the market. We may temporarily suspend your ability to use this function in order to manage supply and demand on the platform."

Taking into account the above terms, I think RateSetter made Mr G aware that withdrawing would only be possible where there were sufficient funds available in the market. RateSetter has explained it received a larger number of requests to release funds during the onset of the Covid-19 pandemic which, in turn reduced liquidity and increased queue times. I'm also aware that RateSetter did provide updates regarding withdrawal wait times on its website to manage investor's expectations.

So taking into account all of the above, I'm satisfied that RateSetter hasn't unfairly delayed Mr G's withdrawal requests.

Fairness of the implementation of the Stabilisation Period

I understand Mr G thinks that RateSetter has changed the terms on which he agreed to invest when it reduced his interest rate. However, I don't agree. RateSetter has relied upon the following term which was in its Investor Terms to introduce the Stabilisation Period:

"19.1. If at any time, RateSetter reasonably believes the Provision Fund does not have sufficient funds (including expected future inflows) to cover current or expected borrower defaults, RateSetter may implement a "Stabilisation Period".

While I think the term gave RateSetter a broad discretion to introduce the Stabilisation Period, I must also consider whether in doing so RateSetter treated Mr G fairly and acted with his best interests in mind.

RateSetter has explained that that prior to April 2020, the Interest Coverage Ratio was and had only ever been above 100% and that the objective – as disclosed to investors – was to maintain it to this level. The Provision Fund Policy on RateSetter's website explained:

"Future economic uncertainty is currently not factored into the Expected Future Loss calculation but this is taken into account by managing the Interest Coverage Ratio to a figure greater than 100%."

It's also clear that the Provision Fund was a vital mechanism in ensuring mutualisation of risk across the loan portfolio. And if this was not sufficiently maintained, investors would likely be exposed to risk beyond that which they'd accepted when agreeing to invest on a platform that mutualised risk across the whole loan portfolio. The Provision Fund policy explained:

"The Provision Fund exists to protect RateSetter investors. It protects all investors equally and so has the effect of mutualising the risk for all investors by diversifying their exposure across the whole loan portfolio. This means that it is the performance of the whole loan portfolio that matters for RateSetter investors."

RateSetter has also explained that expected future losses were estimated each month-end by RateSetter's Executive Credit Committee, based on historic losses in the portfolio as well as independent macroeconomic forecasts produced by Oxford Economics. And that the impact of Covid-19 in March 2020 caused a sharp spike in expected future losses which, when tested at month end April 2020, caused the Interest Coverage Ratio to drop to 74%. It was this level of drop in the Interest Coverage Ratio which RateSetter says meant it was necessary to implement the Stabilisation Period – ensuring investors were protected equally

and that their risk was fully mutualised.

Understandably, there was a lot of uncertainty during the Covid-19 pandemic, and I think it would be unfair to scrutinise a firm's decision taken during this time where it's clear it has taken precautionary steps having relied upon independent forecasts. It's also apparent from the information provided that RateSetter had lengthy discussions regarding what was the best action to take in these circumstances.

So, on balance, I'm persuaded RateSetter's decision to implement the Stabilisation Period was fair, as it was consistent with the objective of maintaining the Interest Coverage Rate above 100% - ensuring continued mutualisation of risk across the loan portfolio - and allowing investors to continue to benefit from protection whilst still receiving interest (albeit less than expected) during a period of economic uncertainty. I'm also satisfied the Provision Fund shortfall estimates were reasonably assessed, as RateSetter considered relevant factors from independent sources. It's also important to consider these decisions were made in unprecedented circumstances and it wouldn't be fair or reasonable for me to consider these with the benefit of hindsight.

I appreciate the investigator commented on RateSetter's decision to close Mr G's account following the sale of the entire loan portfolio to TP. However, the purpose of my decision is to explain my findings on the key issues of this complaint and having reviewed Mr G's submissions in full, I consider the crux of his complaint to be about the delay in actioning his withdrawal requests and reducing his interest rate only. Therefore, I don't find it necessary to comment any further on the sale of the loan portfolio to TP beyond that:

- I agree with the investigator that the sale was a legitimate exercise of the rights given to RateSetter under the Investor Terms by Mr G when he invested.
- I agree that RateSetter was able to close Mr G's account with two months' notice under 16.1. of the Investor Terms.
- I'm satisfied Mr G was only entitled to a return of capital and accrued interest at the point of withdrawal under the Investor terms and so he received what he was entitled to when RateSetter sold the loan portfolio to TP.

RateSetter's delay in providing a full response

RateSetter has made an offer of £250 to recognise the inconvenience caused to Mr G by its delay in providing all available evidence for the complaint. Whilst I've not found a failing in terms of introducing the stabilisation period, the sale to TP or the delay in withdrawing, I think this offer fairly reflects the distress or inconvenience caused to him by not providing this information at the earliest opportunity.

My final decision

My final decision is that I uphold this complaint and instruct Retail Money Market Ltd to pay Mr G £250 for the distress and inconvenience it caused him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 5 April 2023.

Ben Waites
Ombudsman