DRN-4028991

Financial Ombudsman Service

The complaint

Mr J complains that Metro Bank PLC (trading as RateSetter) was irresponsible to lend to him.

What happened

Following two loans in 2018, Mr J borrowed a further £13,000 from RateSetter on 22 February 2022. The loan was due to be repaid in 36 monthly instalments of £422.08.

Mr J says that he had planned to consolidate other debts when he took the loan in February 2022, but he says it became clear he could not afford the repayments and ended up taking out other loans to cover living expenses.

RateSetter says there was no concerning information on Mr J's credit file and the application met all its minimum lending requirements. It acknowledged that Mr J made contact in August 2022 to say the repayments were unaffordable and asked him to call to discuss options for managing his loan.

Our investigator recommended the complaint should be upheld. He considered RateSetter should have done more to verify that Mr J could sustainably afford the lending and he found that, had it done so, it would have found that Mr J was in an unsustainable debt spiral. Our investigator was satisfied the lending was irresponsible and recommended that Mr J should only have to repay the money he'd borrowed.

RateSetter responded to say, in summary, that it verified Mr J's income and checked his credit file and its calculations showed he had almost £300 disposable income each month after the loan repayment.

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.

For clarification, this decision is only considering the 2022 loan. The loans in 2018 are being considered separately.

I need to take into account the relevant rules, guidance and good industry practice.

The Financial Conduct Authority (FCA) was the regulator when RateSetter lent to Mr J. Its rules and guidance obliged it to lend responsibly. As set out in the regulator's Consumer Credit Sourcebook (CONC), this meant that RateSetter needed to take reasonable and

proportionate steps to assess whether or not a borrower could afford to meet their loan repayments in a sustainable manner over the lifetime of the agreement.

CONC 5.2A.4R states that:

A firm must undertake a reasonable assessment of the creditworthiness of a customer before:

1. *entering into a regulated credit agreement; or*
2. *significantly increasing the amount of credit provided under a regulated credit agreement; or*
3. *significantly increasing a credit limit for running-account credit under a regulated credit agreement.*

Repaying debt in a sustainable manner was defined as being able to meet repayments out of normal income without the customer having to borrow to meet the repayments, without failing to make any other payment the customer has a contractual or statutory obligation to make and without the repayments having a significant adverse impact on the customer's financial situation (CONC 5.2A.12R).

In general, I'd expect a lender to require more assurance the greater the potential risk to the borrower of not being able to repay the credit in a sustainable way. So, for example, I'd expect a lender to seek more assurance, potentially by carrying out more detailed checks

- the *lower* a person's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *longer* the term of the loan (reflecting the fact that the total cost of the credit is likely to be greater and the borrower is required to make payments for an extended period).

In addition, as per CONC 5.2A.16G (3): *For the purpose of considering the customer's income, it is not generally sufficient to rely solely on a statement of current income made by the customer without independent evidence (for example, in the form of information supplied by a credit reference agency or documentation of a third party supplied by the third party or by the customer).*

And CONC 5.2A.17R (2) says: *The firm must take reasonable steps to determine the amount, or make a reasonable estimate, of the customer's current non-discretionary expenditure.*

Bearing all of this in mind, in coming to a decision on Mr J's case, I have considered the following questions:

- Did RateSetter complete reasonable and proportionate checks when assessing Mr J's loan application to satisfy itself that he would be able to repay the loan in a sustainable way?

    - If not, what would reasonable and proportionate checks have shown?
- Did RateSetter make a fair lending decision?
- Did RateSetter act unfairly or unreasonably in some other way?

With regard to the first question, RateSetter has sent evidence that it verified Mr J's income, and I've seen the results of its credit check. I acknowledge Mr J also declared his rental was £775, but I don't consider those checks went far enough. I say that because:

- The loan was for 36 months, and RateSetter needed to ensure the repayments were sustainable over that period;
- Although I acknowledge RateSetter's credit check showed only one outstanding loan, it also showed:
    - Mr J had paid off four debts totalling almost £9,000 the previous month;
    - A credit search had been carried out on 3 February 2022;
- RateSetter used an estimate for Mr J's regular expenditure:
    - It says its initial calculations showed Mr J would have had less than £300 of disposable income each month so it needed to be confident the expenditure figures were accurate, given the loan repayment was over £400.

So I find proportionate checks should have included verification of Mr J's regular expenditure, and querying why he needed a further £13,000 given he'd recently repaid so much debt.

I've had a look at Mr J's bank statements from the time as a reasonable proxy for what proportionate checks may have shown.

- I am satisfied that Mr J's share of the rent was £775 as he'd declared;
- Mr J said he was paying for childcare for two children for which his share was £750 – an amount I can verify from his bank statements;
- I can also see regular monthly expenditure on council tax, bills and insurance of around £300;
- Gym membership, phone and internet costs totalled around £170;
- Mr J says he spent around £300 on food each month and a further £140 on travel, both of which are in line with what I can see on his statements;
- Mr J's statements also show he received a £9,500 loan on 6 January 2022 with which he repaid another loan, an overdraft and credit cards. The monthly repayment to this lender was £481;
- This was followed by a further £3,000 loan with a different lender on 3 February 2022 – both this and the above loan were repaid with the RateSetter loan;

I am satisfied that Mr J consolidated all his other outstanding debts with the RateSetter loan so his only credit expense going forwards was the £422.08 monthly repayment to RateSetter. However, his regular monthly expenditure was already over £2,400 from his £2,700 income and so the repayment was unaffordable to him.

In summary, I don't consider RateSetter's checks went far enough, and I'm satisfied that reasonable and proportionate checks would have shown that Mr J could not sustainably make the loan repayments for three years without borrowing again.

Therefore, I find it was irresponsible to lend to Mr J and RateSetter did not make a fair lending decision, although I don't find it acted unfairly or unreasonably in any other way.

My final decision

My decision is that I uphold this complaint. Metro Bank PLC (trading as RateSetter) should:

- Add up the total amount of money Mr J received as a result of having been given the loan. The repayments Mr J made should be deducted from this amount.
    - If this results in Mr J having paid more than he received, then any overpayments should be refunded along with 8% simple interest (calculated from the date the overpayments were made until the date of settlement). *
    - If any capital balance remains outstanding, then RateSetter should attempt to arrange an affordable and suitable payment plan with Mr J;
- Remove any negative information recorded on Mr J's credit file regarding the loan, once it has been repaid.

*HM Revenue & Customs requires RateSetter to deduct tax from this interest. RateSetter should give Mr J a certificate showing how much tax it's deducted if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 17 April 2023.

Amanda Williams
Ombudsman