

The complaint

Ms G complains that Retail Money Market Ltd (“RateSetter”) unfairly reduced her interest returns on her crowdfunding investments and delayed returning her money to her following 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.

Ms G requested to make withdrawals from her investments in March 2020 and later complained to RateSetter as she was unhappy with the time it was taking to complete these

withdrawals.

RateSetter considered Ms G's complaint but didn't uphold it as it said Ms 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.

Ms G remained unhappy with RateSetter's response and so she referred his complaint to this Service for an independent review. Since referring her complaint, Ms G raised further complaint points which the investigator shared with RateSetter. These included:

- RateSetter unfairly reducing her interest rate by half.
- RateSetter unfairly charging her an early withdrawal fee.
- RateSetter unfairly reinvested some of her money despite her wanting to withdraw completely from the platform.

An investigator at this Service looked into Ms 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 Ms G in its Investor Terms that her 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 Ms G's withdrawal requests.
- She didn't think it was unreasonable for RateSetter to charge an early withdrawal fee as the terms were clear that one would apply.
- Auto-reinvesting during a period of low demand, like during the Covid-19 pandemic, meant Ms G's money was effectively trapped on the platform. She felt Ms G had given a clear instruction that she didn't want to continue investing on the platform and by leaving auto-reinvest on RateSetter unfairly prevented her from ending her contract. So she felt Ms G should be compensated for this.
- 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.
- 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.

Ms G accepted the investigator's findings but RateSetter didn't agree with her findings regarding the auto-reinvestment issue. In summary, RateSetter said the auto re-investment element meant that, until funds were released, Ms G continued to earn interest, and the loans continued to follow her reinvestment settings and were re-invested at the original rate to the original borrower.

As no agreement could be reached, the complaint was passed to me to decide.

I issued a provisional decision on the matter in April 2023. I include this below:

What I've provisionally decided – and why

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, fees and auto-reinvestment

I appreciate that Ms G is unhappy with the amount of time it took for RateSetter to complete her withdrawal requests. However, having reviewed the information provided to her at the time of investing on the platform, I'm satisfied RateSetter made her aware that her ability to withdraw from the investment was dependent on liquidity of the market she 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 Ms 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 Ms 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.

I'm also satisfied that the Investor Terms made Ms G aware that a fee would apply when she used the Release Investment function to withdraw from the platform:

“9.3. If you’re using the Release Investment function, the amount returned to you will equal the capital amount requested plus interest earned on that amount to the date your funds are released, minus a Release Fee.”

I also understand that Ms G feels RateSetter shouldn’t have continued to re-invest her money once she had requested to fully withdraw from the platform. I’ve thought very carefully about this and on balance, I don’t think RateSetter has acted unfairly.

RateSetter has explained that auto-reinvestment was a key feature of the investment product, designed to re-invest continuously and carry on with existing loan contracts. The Investor Terms explained how this would work:

“7.3. Capital and interest will (subject to the amounts received reaching the minimum offer amount of £10) be automatically reinvested into the same product in which you initially invested, either at the Going Rate or at Your Rate.”

So I’m satisfied that RateSetter made Ms G aware in the Investor Terms that her money would continue to be re-invested until she could fully withdraw. As I’ve explained above, the only way Ms G could access her funds was by requesting a release of her investment, which was subject to liquidity. And as there was lower liquidity in the market and insufficient number of investors willing to invest when she requested to withdraw, it took longer for the withdrawal requests to take place and her money continued to be reinvested.

I appreciate that, by reinvesting Ms G’s money, it took longer for her to fully withdraw her funds. Whilst I think it could be argued that RateSetter ought to have turned off auto-reinvestment, considering it was aware of the increase in demand to withdraw during the Covid-19 pandemic, even if RateSetter had done so I’m not persuaded Ms G would have been in a better financial position. I say this as she continued to receive interest during this period and had her money not been reinvested, she would have still had to wait some time for her original withdrawal requests to complete. So she’s essentially benefitted from interest she wouldn’t have been entitled to had RateSetter not continued to reinvest her money. It’s also not clear whether Ms G would have been able to make a greater investment return had she invested her money elsewhere. As Ms G would have had to have waited until all her investments had been released, I think its reasonable to suggest she wouldn’t have received all her money back in one lump so and so it’s difficult to say what she would have done each time she received some of her money back.

So taking into account all of the above, I’m satisfied that RateSetter didn’t unfairly delay Ms G’s withdrawal requests, it was able to charge Ms G an early withdrawal fee and it didn’t treat Ms G unfairly by reinvesting her money.

Fairness of the implementation of the Stabilisation Period

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 Ms G fairly and acted with her 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.

RateSetter's delay in providing a full response

RateSetter has made an offer of £250 to recognise the inconvenience caused to Ms 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 her by not providing this information at the earliest opportunity.

Responses to my provisional decision

Both parties accepted my provisional findings and neither provided any further comments for me to consider.

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.

As both parties accepted my provisional findings, there's no reason to change them.

My final decision

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 17 May 2023.

Ben Waites
Ombudsman