

The complaint

Mrs P is unhappy she's being held liable for a loan taken out in her name through Retail Money Market Ltd (RateSetter) as part of a scam. She's also concerned about how the loan has been reported on her credit file.

What happened

The background to this complaint is well known to both parties, so I'll only refer to some key events here.

In February 2022 Mrs P was contacted by someone purporting to be from a legitimate crypto exchange platform offering to help her recover funds she'd lost two years previously as part of a crypto investment scam. This unfortunately also turned out to be a scam.

Using information provided by Mrs P, the scammer applied for several loans on her behalf. She says the scammer told her the loans were necessary to facilitate the recovery of the lost funds – and were temporary and would be paid back as soon as her lost funds were recovered.

On 1 March 2022 RateSetter received a loan application through its website for £15,000. The application was approved, and the funds were paid into Mrs P's account on 2 March 2022. The loan was repayable over 60 months with a monthly payment of £281.89. The £15,000 was then all lost as part of the scam.

Realising she'd been the victim of a scam, Mrs P contacted RateSetter. It investigated and issued Mrs P with a response saying she had facilitated the loan application by providing the scammer with her personal details – and not verifying the legitimacy of what she was being told. RateSetter was also satisfied Mrs P was aware of the loan and so was responsible for repaying it. Mrs P complained to RateSetter, but it maintained its position.

Mrs P referred her complaint to the Financial Ombudsman. She said it was unfair to be pursued for a loan applied for as part of a scam – and that other loan companies had accepted this and written the loans off. Mrs P was also unhappy that her credit file showed missed payments towards the loan in April 2022 – saying she'd been told her account would be put on hold whilst her complaint was under investigation.

Mrs P settled the loan in full on 13 May 2022 and this is correctly reflected on her credit file.

Our Investigator considered Mrs P's complaint but didn't uphold it. He said Mrs P was aware of the loan and agreed to it being taken out, with the funds paid into her bank account. So, he couldn't say it was unfair for RateSetter to pursue Mrs P for the loan together with interest, fees and charges. And our Investigator didn't think RateSetter had misled Mrs P about how any missed or late payments would be reported on her credit file.

Mrs P disagreed with our Investigator's findings and asked for an Ombudsman's final decision. She said RateSetter failed in its '*due diligence*' to check if the loan application was legitimate – and it didn't contact her about the application.

Mrs P was also concerned that it wasn't apparent to RateSetter that there had been multiple loan applications made in such a short space of time. Thus, alerting it to the possibility the loan was being applied for as part of a scam.

Mrs P accepted she knew about the loan – but that the scammer lied to her about what it was for and where the funds were coming from. She said even though she knew about the loan – it was not her intention to apply for it – having been led to believe, by the scammer, that this was necessary to get her lost money back. Mrs P emphasised that she was completely controlled by the scammer, who applied for the loan and signed the loan agreement on her behalf.

Mrs P said she had now paid off the loan – but was concerned about the notice of arrears appearing on her credit file when she'd understood the account had been placed on hold. She wanted this removed.

As part of my review – I asked RateSetter to remove any adverse data from Mrs P's credit file relating to this loan, as I thought there was some ambiguity about when the account was on hold and what the impact of that was. RateSetter has agreed to my request, and Mrs P is happy with this outcome. So, I don't intend to comment further on that point in this final decision.

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.

Having done so, I'm partly upholding this complaint because RateSetter has agreed to my request to amend Mrs P's credit file.

But I agree with our Investigator - and for largely the same reasons – that it was fair and reasonable for RateSetter to pursue Mrs P for the loan. I realise this will be very disappointing for Mrs P and I'd like to assure her I haven't taken this decision lightly.

In doing so, I've very carefully considered all the evidence – including more information from RateSetter and Mrs P about the adverse recording on her credit file. And I'd like to assure Mrs P that if I don't mention a particular point, it's not because I haven't considered it, but I've focussed instead on what I believe to be important to the outcome of this complaint.

I don't doubt that Mrs P has been the victim of a cruel and sophisticated crypto investment recovery scam – but it is ultimately the scammer that is responsible for her loss. My focus is on the actions of RateSetter – and whether it has been fair and reasonable in its dealings with Mrs P.

Firstly, I don't doubt that it was the scammer who physically applied for the loan on Mrs P's behalf and agreed to its terms. But I must bear in mind that Mrs P *accepts* she knew about the loan, and therefore she did agree - albeit based on the lies told to her by the scammer – to the loan being taken out.

Mrs P thinks RateSetter should've done more to check if the loan application was legitimate. And with the benefit of hindsight and now knowing she's been the victim of a scam – I can fully understand why Mrs P thinks that. But the issue here is that at the time, as far as RateSetter was concerned, this was a legitimate application. It contained personal information about Mrs P, as well as information about her finances which was checked and verified as part of the application process. And I can also see that Mrs P's signature (electronic) appears on the loan agreement.

It's also doubtful further checks would've shown that a number of loans had been applied for in Mrs P's name – given they were applied for in such close succession and so were unlikely to have shown up on her credit or financial records. But even if RateSetter had had concerns and spoken to Mrs P, given what she has said about the influence she was under from the scammer, I think it more likely than not she would've still agreed to the loan.

This is a difficult message for me to give, and I know it's a difficult message for Mrs P to receive. But taking everything into account, I can't say RateSetter has acted unfairly in holding Mrs P responsible for repaying the loan and any associated interest, fees, and charges.

Putting things right

RateSetter has agreed to remove any adverse data relating to this loan from Mrs P's credit file.

My final decision

My final decision is that this complaint is upheld in part. Retail Money Market Ltd should:

- Arrange for all adverse data in relation to this loan to be removed from Mrs P's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs P to accept or reject my decision **before 23 May 2023**.

Anna Jackson
Ombudsman