

The complaint

Mr B complains that Retail Money Market Ltd (“RateSetter”) delayed returning his money following his withdrawal requests. He says RateSetter misled him regarding how withdrawal requests would be processed, and he feels it unfairly reinvested his investment repayments.

Mr B also complains that RateSetter unfairly reduced his interest returns on his investments.

What happened

RateSetter is a peer-to-peer crowdfunding platform which was acquired by a third party (“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.

Mr B requested to make a full withdrawal from his accounts between June and September 2020. In October 2020 Mr B complained to RateSetter as he was unhappy with the time it was taking to complete these withdrawals. He said he lost around £800 from his withdrawal request from his investments in the five year market as his request was not being processed as previously advised by RateSetter. He said RateSetter diverted around £800 into his Access product account and reinvested rather than releasing this money to him.

RateSetter considered Mr B's complaint but didn't uphold it. RateSetter said Mr B's reinvestment settings for his investments in the five year market in his Everyday Account had not changed since May 2018 and as these were set to reinvest his repayments into the Access product account, his repayments had been reinvested in line with these settings. RateSetter also said that in September 2019, prior to the launch of its Access, Plus and Max products, it had sent emails informing investors how the new products would operate and updated the investor terms in accordance to the new products. It said if customers were unhappy with their funds being continuously reinvested they could have continued to invest in the one and five year products where an investor can amend the settings to send funds to the holding account once repayments are made. RateSetter also made Mr B aware that he was unable to release loan contracts with a value of less than £10 in line with the Investor Terms and that his withdrawal requests were in a queue to be released which was subject to the liquidity in the market at the time.

Mr B remained unhappy with RateSetter's response and so he referred his complaint to this Service for an independent review. He said that the key product info for his account made it clear that reinvestment would stop once a withdrawal request was made.

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

- Auto-reinvesting during a period of low demand, like during the Covid-19 pandemic, meant Mr B's money was effectively trapped on the platform. She felt Mr B had given a clear instruction that he didn't want to continue investing on the platform and by leaving auto-reinvest on RateSetter unfairly prevented him from ending his contract. So she felt Mr B 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 he 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.

Both parties didn't agree with the investigator's findings.

In summary, Mr B said that RateSetter seems to be trying to re-define the meaning around the statement "products will automatically invest until you want to withdraw". He also said it's unfair for RateSetter to take lenders' money for the Provision Fund rather than using its discretion to return it in some way.

RateSetter said that by reinvesting Mr B's funds, he didn't lose out as he continued to earn

interest on his investments in line with the rate he had specifically selected in his account settings. RateSetter had reviewed Mr B's account and noted he was actively releasing his funds once the repayments were occurring and so he was aware that he could manually release the funds as repayments were made into his holding account. RateSetter said Mr B's funds invested in the five year market were released on 2 September 2020 and his funds in his Access Account on 30 December 2020 amounting to around £3,500 which evidences he was actively withdrawing repayments as and when they were made.

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

I issued a provisional decision in July 2023, which I include below:

What I've provisionally 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 and auto-reinvestment

I appreciate that Mr B is unhappy with the amount of time it took for RateSetter to complete his withdrawal requests and that this was due, in part, to the reinvestment of his funds. 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 B 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 B 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 also understand that Mr B feels RateSetter shouldn’t have continued to re-invest his money once he 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 Mr B aware in the Investor Terms that his money would continue to be re-invested until he could fully withdraw. As I’ve explained above, the only way Mr B could access his funds was by requesting a release of his investment, which was subject to liquidity. And as there was lower liquidity in the market and insufficient number of investors willing to invest when he requested to withdraw, it took longer for the withdrawal requests to take place and his money continued to be reinvested.

I appreciate that, by reinvesting Mr B’s money, it took longer for him to fully withdraw his 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 Mr B would have been in a better financial position. I say this as he continued to receive interest during this period and had his money not been reinvested, he would have still had to wait some time for his original withdrawal requests to complete. So he’s essentially benefitted from interest he wouldn’t have been entitled to had RateSetter not continued to reinvest his money. It’s also not clear whether Mr B would have been able to make a greater investment return had he invested his money elsewhere. As Mr B would have had to have waited until all his investments had been released, I think it’s reasonable to suggest he wouldn’t have received all his money back in one lump sum so and so it’s difficult to say what he would have done each time he received some of his money back.

I also understand Mr B says the information RateSetter gave about the new products he invested in was misleading. Specifically, he says the following statement regarding reinvestment was misleading:

“The new products will automatically reinvest until you want to withdraw.”

I appreciate Mr B’s point here and I agree that the statement could have provided more

clarity regarding how reinvestment would continue to until an investor could withdraw rather than when they want to withdraw. However, as I've mentioned above, based on the all the available evidence, I'm not persuaded Mr B has lost out financially because of this. I'm also not persuaded Mr B wouldn't have continued to invest on the platform had the reinvestment mechanisms been clarified further.

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 Mr B 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.

RateSetter's delay in providing a full response

RateSetter has made an offer of £250 to recognise the inconvenience caused to Mr B 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 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 and for not following his reinvestment settings at all times.

Responses to my provisional decision

RateSetter didn't provide a response but Mr B did. In summary, he said:

- RateSetter didn't follow its own Investor Terms as it continued to reinvest his funds despite him requesting to withdraw.
- My provision decision seems to turn on whether or not he lost out financially by being denied access to his money. He argues that he could have made a greater financial return investing in other products, such as a tracker funds which could have provided a return of around 20-50%.
- My provisional decision assumes that his reinvested funds were invested in loans which didn't fail. But if they had failed, he would have lost out financially.
- He gave evidence that RateSetter were reinvesting his funds into loans with borrower APRs of around 20%, whilst he was only receiving a target interest rate of 3%. He said this illustrates that he was being invested into risky loans whilst RateSetter earned a risk-free high return.

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 still don't think this complaint should not be upheld for the reasons set out in my provisional decision.

I hope Mr B doesn't take it as a discourtesy that I won't be responding to each submission or every point he has raised. The purpose of my decision isn't to do that, but rather to explain my findings on what I consider to be the key issues.

In my provisional findings I said I felt RateSetter ought to have made it clearer how auto-reinvestment would work but I didn't think Mr B had lost out financially as a result of this. I understand Mr B says he would have invested in other investment products which would have provided him with a greater return. I appreciate Mr B's point here, but I have to make my decision without the benefit of hindsight. If Mr B had a clear alternative investment strategy I would have expected him to have provided evidence of this. Mr B hasn't provided with any evidence to show he invested any released funds into such products or had intended to do so, as such, I'm not persuaded to change my findings.

I'm also not persuaded Mr B wouldn't have invested with RateSetter had it made it clearer to him initially how auto-reinvestment would work. I say this as it appears Mr B had previously

benefited from the auto-reinvestment feature and that he's only found reason to complain when it's prevented him from withdrawing during a period of economic uncertainty.

I've also considered Mr B's points regarding RateSetter exposing him to too much risk through auto-reinvesting his funds and that RateSetter unfairly benefited from this. As I explained in my provisional findings, the risk Mr B was exposed to by loans he had been re-invested into was mutualised by virtue of the Provision Fund. And so, I don't agree that RateSetter's actions exposed him to a higher risk than that he was accustomed to through investing on the platform. I appreciate Mr B has referred to evidence which shows his funds being lent to a borrower with an APR of 19%, which he thinks demonstrates his funds being matched to risky loan which he only received only 3% on this particular loan. However, it's important to understand that the both rates aren't all about risk. As I've explained, Mr B's matched rate of 3% isn't just about the risk of the loan defaulting, but also includes the fact that his risk is mutualised by virtue of the Provision Fund. Also, the 20% borrower rate is actually mostly fees which includes payments to the Provision Fund.

So having considered all of Mr B's further submissions, I'm not persuaded to change my provisional findings.

Putting things right

RateSetter has made an offer of £250 to recognise the inconvenience caused to Mr B by its delay in providing all available evidence for the complaint, which I consider to be fair and reasonable in all the circumstances.

My final decision

My final decision is that Retail Money Market Ltd must pay Mr B £250 for the distress and inconvenience it has caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 3 October 2023.

Ben Waites
Ombudsman