

## The complaint

Mrs M complains that Retail Money Market Ltd (“RateSetter”) unfairly delayed returning her money following her withdrawal requests. She complains that RateSetter reinvested her funds despite her changing her reinvestment settings in order to prevent this from happening.

## 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.

Mrs M previously invested in RateSetter’s Rolling Market account in which she had the option to transfer capital and interest repayments to a holding account. However, In March 2019 RateSetter changed its accounts on offer and Mrs M started investing in the Access account which didn’t have the feature to transfer these repayments to a holding account. Mrs M requested to make a full withdrawal from her investments in March 2020. To stop the reinvestment of capital and interest repayments, Mrs M changed her reinvestment settings on 18 March 2020 from the Going Rate to 8% in order to prevent her funds being matched to borrowers. However, RateSetter then reinvested her funds at lower interest rates than she had set.

In March 2020 Mrs M complained to RateSetter as she was unhappy with the time it was taking to complete these withdrawals and she felt RateSetter hadn’t adhered to her reinvestment settings.

RateSetter considered Mrs M’s complaint but didn’t uphold it. In summary, it said:

- RateSetter manages a queue of money (made up of new investments and reinvestments) so that investors can access their money at any time. However, this is not a guarantee and in extreme circumstances investors may have to wait for the borrower’s regular repayments.
- This explains how the platform operates and access to Mrs M’s funds is not guaranteed as the platform works on a supply and demand basis.
- When Mrs M made her request to release her investment, her request was put in a queue, dependant on market liquidity. Whilst her request is being processed, repayments will still follow the reinvestment settings and thus her funds would still be earning and once the request has been processed, her funds would be released and this would include the additional interest earned.
- The Access account was renamed from the Rolling Market account when it introduced the new products. When RateSetter introduced the Rolling Market, the changes were explained on the blog section of its website which explained that when

an investment is matched to a borrower, it would remain matched to that borrower, at the same rate of interest, until that loan is repaid.

- RateSetter had reviewed the repayments and reinvestments and confirmed that these are working as normal. This is because the funds Mrs M stated as having been matched at a lower rate are the funds which are the remaining portion of the original contract and these are sent back to the previous borrower to complete the remaining loan term.

Mrs M remained unhappy with RateSetter's response and so she referred her complaint to this service for an independent review.

Having referred her complaint to this service, Mrs M told this service that she had received emails from RateSetter regarding a computer script she'd used to automatically log into her account and withdraw funds. RateSetter said in these emails that it considered the script to be in breach of its terms, and likely constituted an offence under the Computer Misuse Act 1990. Mrs M said the content of the emails might constitute criminal harassment, due to unjustified threats of legal action, and that it wasn't treating her fairly.

RateSetter considered this to be a new complaint issue and didn't consent to it being included in the existing complaint.

One of our investigators considered Mrs M's complaint and upheld it. In summary, he said:

- He felt RateSetter had made it clear to Mrs M 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, he didn't think it was unreasonable that it took longer than normal for RateSetter to process Mrs M's withdrawal requests.
- Auto-reinvesting during a period of low demand, like during the Covid-19 pandemic, meant Mrs M's money was effectively trapped on the platform. He felt Mrs M 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 he felt Mrs M should be compensated for this.
- He didn't think RateSetter had provided a clear explanation as to why Mrs M's funds were reinvested at lower interest rates than she had set in her reinvestment settings.
- His understanding was that a borrower may be scheduled to receive multiple payments as part of their contract. And therefore, repayments might be diverted back to the same borrower. But having viewed the account terms, and screenshots of what lenders see on the platform, he didn't think this was made at all clear to lenders.
- He had concerns regarding the way in which RateSetter communicated the changes made to the new accounts – including the Access account. He said he'd reviewed a copy of the emails that were sent out when the new products were introduced and noted RateSetter provided a link to a blog post setting out the key changes, including that "The new products will automatically reinvest until you want to withdraw."
- He said this was misleading as using the wording until you want to withdraw gave the implication that auto-reinvest will stop at the point the customer asks to withdraw.
- That said, he wasn't convinced that, if RateSetter had been clearer about the changes being made, Mrs M would have exited the platform. It's only in hindsight, knowing what's happened with the pandemic, that it's become clear the inability to turn off auto-reinvestment has created a problem. In normal circumstances, she'd likely still have been able to withdraw relatively easily via selling on the secondary market.

- With regards to Mrs M's computer script complaint issue, he said, ultimately, it all stems from the same issue – namely that RateSetter were automatically reinvesting Mrs M's funds after she'd already requested a full withdrawal. So, he consider this to be new information/evidence in connection with the existing complaint and not a new matter entirely.
- He didn't think it was necessary, or within our remit, for him to comment on whether the script put Mrs M in breach of the terms and/or the Computer Misuse Act – and so to make a finding on whether RateSetter's email was a reasonable response.
- However, he said that had RateSetter not been automatically reinvesting funds in clear breach of her instructions, this situation would never have happened to begin with. And as Mrs M was having to log in manually each morning to try and release funds before auto-reinvestment took place, he felt it was clear she implemented the script to save her the trouble of doing so.
- He acknowledged that RateSetter's email would have been distressing for Mrs M to receive and he recommended RateSetter pay her £200 for the level of upset caused as a result of the incorrect auto-reinvestment of her funds.

Both parties disagreed with the investigator's findings.

Mrs M said she received approximately £1,500 in interest at the lower rate and about £1,000 of this interest was in relation to the Access product. She said that if all of this interest had been eligible for the 8% rate, she had set in her reinvestment instructions then she ought to receive around £300.

RateSetter said the auto-reinvestment was a feature of the Access account which was designed to reinvest continuously and carry on with existing loan contracts. It said this meant that, until funds were released, Mrs M continued to earn interest. With regard to the emails sent to Mrs M, it said that its records show that from the 1 November 2020 until the 25 of November 2020 Mrs M visited the login page over 1,000 times and this had the potential to cause serious disruption to its systems. It said it asked Mrs M to stop using any scripts to access the RateSetter website and asked her to contact it to discuss this further.

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

I issued a provisional decision on the matter in August 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.”

*I appreciate that Mrs M 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 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 Mrs M 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 Mrs M 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 Mrs M’s main complaint is regarding RateSetter having 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 I can fairly conclude that she has been financially disadvantaged as a result of this.*

*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 Mrs M 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 Mrs M 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 his money continued to be reinvested.*

*I appreciate that, by reinvesting Mrs M'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 Mrs M 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 Mrs M would have been able to make a greater investment return had she invested his money elsewhere. As Mrs M would have had to have waited until all her investments had been released, I think it's 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.*

*I'm also aware that Mrs M says RateSetter reinvested her funds at a lower rate than she had set in her reinvestment settings. It's not clear why this happened. RateSetter says it's because funds on existing loan contracts can go back to the same borrower, at the rate originally agreed. RateSetter has not provided any evidence to show this happening on an individual loan-basis for Mrs M's account. Also, looking at the terms and the information provided to Mrs M when her account changes from the Rolling Market to the Access account, I can't see that this was clearly explained to her. However, for the reasons I've given above, I don't think Mrs M has been financially disadvantaged as a result of this – as she's benefitted from some interest, albeit less than the 8% rate she had set in her reinvestment settings.*

*I also agree with the investigator's findings that had RateSetter made this clearer, I'm not persuaded Mrs M would have exited the platform. I say this as it seems in 'normal' circumstances, outside of the implications of the Covid-19 pandemic where requests to exit the platform increased, Mrs M would have likely still have been able to withdraw relatively easily via selling on the secondary market.*

*I've also thought carefully about the emails Mrs M received from RateSetter regarding the computer script she was running on her account. Despite this being an additional complaint point raised following Mrs M's original complaint to RateSetter, I'm satisfied I have the power to address this in my decision. I say this as our service has an inquisitorial remit, which allows me to consider the subject matter of a complaint as a whole and not limited to just considering the specific complaint points or alleged losses that are put to us by a complainant. The courts have upheld this approach – for instance in *R (Williams) v Financial Ombudsman Service* [2008] EWHC 2142 (Admin), Irwin J said:*

*"The ombudsman is dealing with complaints, not causes of action. His jurisdiction is inquisitorial not adversarial. There is a wide latitude within which the ombudsman can operate."*

*RateSetter sent Mrs M some emails in December 2020 warning her not to use the computer script she'd been running in order to manually withdraw her uninvested funds. In these emails RateSetter suggests that Mrs M's actions breached its Website Terms of Use and were likely to constitute an offence under the Computer Misuse Act 1990. It isn't within my remit to comment on whether the script put Mrs M in breach of the Computer Misuse Act and so I've focused on whether Mrs M actions amounted to a breach of the Website Terms of Use.*

*The Website Terms of Use Section 2.5.7 explained:*

*“[You... will not attempt to] use the Websites or Exchange in any manner that disrupts their operation.”*

*RateSetter said in its 22 December 2020 email to Mrs M that an individual customer using a script within reasonable bounds is unlikely to disrupt its systems. It's clear from this email that Mrs M's actions didn't disrupt the operation of RateSetter's website and that RateSetter's concerns were regarding the prospect of greater disruption caused if several customers were to use Mrs M's script. So, it follows that Mrs M didn't breach the Website Terms of Use.*

*Whilst I'm pleased to see both parties engaged in the discussion regarding the use of the script, I do think RateSetter's first email sent to Mrs M on 8 December 2020 was a little heavy handed and I can appreciate why it caused Mrs M concern. In this email RateSetter said Mrs M's actions were likely to constitute an offence under the Computer Misuse Act 1990 and it said it would take all necessary actions to protect itself. However, in the next email sent on 22 December 2020, RateSetter clarifies that it would only look towards taking any action under the Computer Misuse Act in extreme cases. I think this suggests that RateSetter recognised that the references to potential illegal activity was disproportionate and unnecessary.*

*Ultimately, Mrs M was running a computer script as RateSetter had made it difficult for her to withdraw her funds before they were reinvested, I don't think her actions breached the Website Terms of Use and I agree that the language used in the first email was quite threatening. So I think RateSetter should pay Mrs M £200 to recognise the distress and inconvenience the email caused her.*

## **Responses to my provisional decision**

RateSetter accepted my provisional findings and Mrs M didn't respond by the deadline provided.

## **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 RateSetter accepted my provisional findings and Mrs M didn't provide any further comments for me to consider, I see no reason to depart from my provisional findings. And as I've already set out my full reasons for upholding Mrs M's complaint, I have nothing further to add.

## **Putting things right**

RateSetter should pay Mrs M £200 to recognise the distress and inconvenience the email caused her.

## **My final decision**

My final decision is that Retail Money Market Ltd must pay Mrs M the compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 26 September 2023.

Ben Waites  
**Ombudsman**