

Complaint

Mr G is unhappy that Metro Bank PLC (trading as RateSetter) loaded a Cifas marker against his name.

Background

In October 2021, Mr G applied for a loan with RateSetter. His first payment was due on 1 November 2021 but he didn't make it. RateSetter contacted him about this missed payment but he didn't respond to its communications. On 18 November, a debt advisor sent a proposal for a debt management plan (DMP) to RateSetter, which it accepted.

Mr G has told us he has a gambling problem. This led to him seeking advice on managing his debts and also voluntarily registering with GAMSTOP – a self-exclusion scheme set-up to protect people who are vulnerable to the risks of excessive gambling and want to protect themselves. He told RateSetter that he was mindful of his increasingly precarious finances in the summer of 2021. In its view, he knew that there was no realistic chance that he'd ever pay back the loan it granted in October 2021.

As a result, it loaded a Cifas marker against his name for "evasion of payment".

Mr G didn't think that was fair and so he complained. RateSetter didn't agree to remove the marker. Mr G referred his complaint to this service. It was looked at by an Investigator who upheld it. The Investigator said there wasn't strong enough evidence to say that Mr G didn't intend to repay the loan.

RateSetter disagreed with the Investigator's opinion and so the complaint has been passed to me to consider and come to a final decision.

Findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

The question I must consider here is whether RateSetter acted fairly and reasonably in loading a marker with Cifas. It's a member of Cifas which means it's agreed to abide by the National Fraud Database Principles. Those principles set a high standard that a firm must meet if it wants to load adverse information against a customer's name.

It says that in order to do so:

"There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted ... [and] ... The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police."

The onus is on RateSetter to demonstrate that this standard has been met. I've considered the evidence provided by both sides carefully and I'm not persuaded that it has done so here.

The key factor here is what Mr G's intentions were at the time he applied for the loan. The steps he has taken to better manage his personal finances, such as setting up a debt management plan and registering with GAMSTOP both came *after* the loan was granted. However, Mr G has conceded that his debt problems had come to a head in the summer of 2021. I think RateSetter's argument appears to be that, as he knew he was in serious financial difficulties and had a gambling problem, he couldn't possibly have intended to repay it. But I don't think that necessarily follows.

Mr G said that he was taking out the loan for debt consolidation purposes. He told our Investigator that, as a consequence of his addiction, he had other debts. His plan had been to use this loan to settle some of those debts. However, he tells us that his addiction got the better of him and he used it to gamble. He also told us that he intended to keep up with loan repayments with his wages but that he lost his job around the same time.

Nonetheless, nobody gambles with the aim of losing and so I think it's far-fetched to say that his intention was to evade repayment of the loan. He may have had a background awareness of the risk that he might not be able to repay the loan, but that's not an indication that he's committed a financial crime and is some way short of the standard set out above.

Final decision

For the reasons I've set out above, I uphold this complaint. If Mr G accepts my decision, Metro Bank PLC trading as RateSetter should remove the Cifas marker.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 17 January 2024.

James Kimmitt
Ombudsman