

The complaint

Mr W complains that Metro Bank PLC trading as RateSetter (“RateSetter”) held him responsible for a loan he didn’t apply for.

What happened

Mr W is represented in this complaint, but I’ll mainly refer to Mr W for ease of reading.

What Mr W says

Mr W explained that in December 2021 he noticed a direct debit had been listed on his bank account that he didn’t recognise. He found that the Direct Debit had been requested by RateSetter to repay a loan for £10,000 that had been paid into his account the previous month.

Mr W contacted RateSetter who informed him they’d received an application for a loan in Mr W’s name and paid the money into his bank account. Mr W denied making the application and explained that he’d been owed money by his lodger (Mr D) for unpaid rent. Mr D had also told Mr W that he was owed money (£10,000) by other persons (unknown) and that Mr D would arrange for the whole amount to be paid into Mr W’s account because he was having difficulties with his own bank account at the time.

Mr W went on to say that Mr D told him to keep £3,000 and pay the remainder to two different accounts in Mr D’s name. The £3,000 was made up of past (& future) rent and some incidental expenses.

Mr W said he received the money and made the payments as agreed with Mr D. Mr W said he didn’t notice that the incoming payment was in the name of “RateSetter” and was unaware of them at the time. It wasn’t until he saw the Direct Debit that he found out they were a loan company.

Mr W didn’t think he was responsible for the loan because he was unaware of it and didn’t agree to it or apply for it. RateSetter held Mr W responsible for the loan and Mr W raised a complaint. Mr W also reported the matter to the police and Action Fraud. The loan was settled by a close family member in order to prevent adverse financial records affecting Mr W’s credit rating.

What RateSetter says

RateSetter examined the circumstances of the loan and decided not to write it off, believing Mr W was responsible. In summary they said:

- Mr W didn’t question the source of the funds which appeared as “RateSetter” in his account.
- Mr W confirmed he’d spent a portion of the funds.

- Mr W only provided limited messages to support his case.
- Lack of confirmation of an active police investigation.
- Open Banking was authorised as part of the application process requiring the user to access their own online banking.
- It's considered a civil dispute between Mr W and Mr D.

Mr W was left unhappy with RateSetter's outcome and brought his complaint to the Financial Ombudsman Service for an independent review where it was looked into by an investigator.

The investigation so far

Both parties were asked for any information or evidence to support their respective case. Mr W, through his representatives supplied details about what had happened and evidence to support the rental agreement and an explanation of how Mr W was drawn into the loan application (without his knowledge) by Mr D.

In summary, it's Mr W's case that:

- He was innocently used to receive the loan which was applied for without his knowledge or permission.
- He was acting in good faith when he moved the funds which had been requested by Mr D to be sent to two other accounts.
- He believed the money was owed to Mr D but wasn't told anything more about the debt.
- He was told by Mr D that his account couldn't be used at the time to receive the debt which is why he asked to move the whole amount into Mr W's account.
- He wasn't aware of "Open Banking" and hadn't given his permission to use it.
- It's accepted that Mr W was naïve when he entered into the arrangements to accept the payment (loan) and move the money to two other accounts.
- The £3,000 he kept was a genuine debt due to rental arrears and a payment to cover future rental fees and expenses.

Mr W complained that:

- RateSetter failed to undertake an appropriate investigation into his situation.
- RateSetter failed to properly assess the loan application which was made using false details and without his knowledge or permission.
- There was no binding contract due to the above.

As a result of the loan application, Mr W and a close family member have incurred significant losses. Mr W believes RateSetter should repay the loan, any charges and fees plus additional legal expenses incurred by him.

RateSetter provided details of the loan application and their processes:

- The loan application was made through a credit broker.
- Open Banking was used to analyse the income and expenditure from Mr W's account.
- Various credit checks were used to establish the viability of the loan application.
- The email and phone number were different to that which Mr W said he usually uses.

After considering the evidence, the investigator didn't uphold Mr W's complaint, commenting that:

- There's no explanation how Mr D could receive two bank transfers from Mr W, when Mr W said the reason for routing the "debt" payment to him was because Mr D was having issues with his bank account.
- The loan payment showed it was from RateSetter on Mr W's account, but he didn't appear to have questioned this.
- Loan details matched Mr W's personal information and bank statements were provided through Open Banking. This needed Mr W's private security information in order to access his online banking and give authority to release the statements through Open Banking.
- There were inconsistencies in the information provided to Mr W by Mr D.
- Overall the evidence pointed towards Mr W having knowledge of the loan.

Mr W, through his representative, strongly disagreed with the investigator's outcome, arguing that the recommendations were very limited based on the comprehensive evidence and analysis of the situation provided by Mr W.

Further commentary was received which, in summary, stated:

- Many points raised by Mr W weren't considered.
- It's accepted that Mr W was too trusting and naïve, but the investigator's outcome questions Mr W's integrity.
- The question of whether a contract existed between Mr W and RateSetter (which could therefore be enforced) was never answered.
- Mr W had no financial motivation to be involved in the loan as he had no need for additional funds.
- It has cost Mr W a significant amount of money to deal with this including additional lawyers bills.
- Lawyers wouldn't have been engaged if those close to Mr W thought he was intentionally involved in this situation.

Further investigations were carried out by a different investigator who provided their own

recommendations, again they didn't uphold Mr W's complaint, commenting that:

- Different contact details (email and phone) aren't evidence that Mr W was unaware of the loan arrangement.
- The receipt of Mr W's bank statement through Open Banking showed a connection between the application and Mr W.
- It was thought that RateSetter hadn't retained a copy of those statements.
- There was no plausible way for Mr D to obtain the online banking details needed to log into Mr W's account as they were known only to Mr W and weren't written down.
- It was concluded that the evidence showed Mr W should be held liable for the loan.
- RateSetter didn't treat Mr W unfairly.
- The investigation and response to requests for information (to RateSetter) were reasonable.
- There was doubt cast on the reasons for Mr D not been able to receive funds into his account.

Mr W's representatives again strongly disagreed, making further points:

- Mr W is a victim of this fraud carried out by Mr D.
- The timely repayment of the loan by Mr W and his family support his lack of involvement in the loan.
- There was no motive for Mr W to be involved in the loan fraud, especially considering he was already owed in excess of £10,000 by the family firm and could have obtained funds as necessary.
- The change in contact details was disregarded by the investigator.
- It was unfair to accept RateSetter's position when they were unable to provide the bank statements they'd earlier referred to.
- There was no contract between RateSetter and Mr W.

As no agreement could be reached, the complaint has now been passed to me for a decision.

As part of my own investigation, I examined the issue of the statements which were used to support RateSetter's assessment of the loan application. It had been earlier mentioned that these weren't available, but this was incorrect. RateSetter obtained details of Mr W's account through Open Banking. I asked Mr W to explain how this had occurred, as access to Open Banking (in this complaint) is only through the user gaining access to their own online banking, initiated by RateSetter as part of the loan application process.

Mr W's representatives recognise this is a matter of concern, but strongly believe Mr W is naïve, rather than involved in the loan itself. They've suggested that whilst Mr D was living with Mr W, access to Mr W's online banking was obtained (probably to do with arrangements

to have the £10,000 paid to him) and this is where Mr D arranged for the Open banking permissions to be given to RateSetter without Mr W's knowledge.

Open Banking – this is a feature that allows access to a person's bank account by third parties.

I issued my provisional findings on the merits of Mr W's complaint on 3 November 2023. In my provisional findings, I explained why I intended to partly uphold Mr W's complaint and offered both sides the opportunity to submit further evidence or arguments in response. An extract of that decision is set out below and forms part of this final decision:

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.

Much has been written about the situation Mr W found himself in and I'd like to confirm that I've considered all the testimony/evidence and information provided by both parties. I'm very aware that I've summarised this complaint above in far less detail than Mr W and his representatives may wish. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact the decision I'm making.

Whilst the submissions are comprehensive, the complaint made by Mr W is clear. He believes he's the victim of ID theft which resulted in his lodger (Mr D) falsely using his details to apply for a loan, whilst then engineering for Mr W to send the bulk of that loan to him. RateSetter believe there's evidence to support that Mr W knew about the loan and was involved in the process. He should therefore be required to abide by the loan arrangement and repay it (which has already been done).

Some matters here are quite clear to me, whilst some others are not. For clarity, I'm setting out those factors that I think are apparent from the overall evidence:

- *Mr W had a genuine arrangement with Mr D to rent out a room.*
- *Mr D had missed payments on the rent he owed to Mr W.*
- *The email and phone number attached to the loan application are different to those used by Mr W.*
- *The loan enquiry came through a credit broker after an account was created with them in Mr W's name.*
- *Open Banking was used to obtain statements from Mr W's bank account.*
- *Mr W received a £10,000 loan that was titled "RateSetter" into his bank account.*
- *He retained £3,000 of the loan which was later spent.*
- *The statements show that the day the loan was received, Mr W made two payments (£2,000 & £5,000) to different bank accounts in Mr D's name.*

- *Mr W attempted to call Mr D on several occasions after the issue came to light.*
- *The matter was referred to the police – but no update by them was ever provided.*

There are two main considerations here, one is that if the evidence shows (on balance) that Mr W was involved with the loan application, then he'd be held liable for the full costs and charges from it. Similarly, if it didn't, then he wouldn't. Secondly, if it's shown that Mr W had used those funds and had knowledge about the general circumstances, then he could be held liable for the repayment of the substantive loan amount but couldn't be held liable for the charges/fees and interest.

To be clear here, there are no accusations being thrown out concerning Mr W or his integrity, what I'm considering is, on balance, if it's fair and reasonable for Mr W to be held liable for the whole arrangement/ the substantive loan payment or for it to be written off in its entirety.

But, there are some aspects of Mr W's explanation that I found hard to understand:

- *Open Banking access was initiated through the RateSetter website, so it's difficult to imagine that Mr W wouldn't have noticed something unusual about the process when Mr D asked him for his phone. There would have been different screens which Mr W would likely have seen as part of the RateSetter web pages.*
- *There was no plausible reason to give access to online banking to Mr D in order to receive the "debt" from Mr D's associates.*
- *The story that Mr D's account couldn't be used was lacking in plausibility as he was able to receive the loan funds on the same day it was paid into Mr W's account.*

What the evidence currently shows here is that Mr W opened access to his online banking through the Open Banking portal from RateSetter's website. I think the critical element here is whether Mr W knew about the loan or was duped into giving all his information away to his lodger.

Given the steps needed to access Open banking, I think it unlikely that Mr W wasn't aware that Mr D was using his personal information for something other than arranging the repayment of a debt. But I'm not convinced Mr W specifically knew it was to be used with RateSetter to apply for a loan for £10,000.

RateSetter themselves haven't been able to show direct contact with Mr W prior to the payment of the loan into his account. So, I don't think they can hold him to the contract created when the loan was applied for.

Having said that, Mr W used those funds that came into his account, some he kept and the bulk he sent to Mr D – on the same day he received them. I don't doubt that Mr W's involvement was driven by naivety and a willingness to assist his lodger. But, I think there's sufficient evidence to support the position that Mr W had some knowledge that Mr D's circumstances were, at the least unusual, particularly his request to use Mr W's account to route the payments. I'm afraid that Mr W's version of events doesn't really hang together as a plausible reason to accept funds in such an unusual manner.

Given that Mr W received a payment from RateSetter (I acknowledge he said he was unaware who they were at the time), and went on to utilise them, either for himself or pay them to Mr D, my current thoughts are that it's both fair and reasonable for RateSetter to

require the repayment of the substantive loan (which has already been repaid), but not to add any charges/fees or interest to it. I'm currently intending to recommend that those additional amounts paid are refunded to Mr W.

I have considered those additional points raised by Mr W and his representatives concerning RateSetter's approach/ and their own investigation. Having examined how the information was used and their own approach, there's nothing that particularly stands out that I'd make comment on.

It's worth reiterating that as part of the application process, access to Open Banking itself is likely regarded as a safeguard to false loan applications due to the additional security required to gain access to the applicants own bank account, so I don't think that RateSetter's approach was unreasonable when they processed the application for a loan.

I recognise Mr W's representatives comments concerning motive, but my findings relate to whether he can be held liable for the loan based on the available evidence. I understand why they've said that, but for the purposes of this complaint, my current thoughts are to recommend the repayment of the fees/charges/any interest over and above the loan amount.

I understand that Mr W has also claimed the legal fees be repaid. I currently don't think that's something that RateSetter should have to pay. It was Mr W's choice to pay for this service, so I don't think it's then fair to expect RateSetter to pay the bill when they had no say in the costs incurred.

My provisional decision is that I'm currently minded to uphold this complaint in part and require Metro Bank PLC trading as RateSetter to repay those additional fees/interest and charges over and above the substantive loan amount already repaid.

I invited Mr W and RateSetter to give me any more evidence and information they wanted me to consider before issuing my final decision. Both parties responded and accepted my provisional 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, and as both parties accepted my provisional decision, I see no reason to reach a different conclusion. So, this final decision confirms the findings set out in my provisional decision.

Putting things right

In order to settle this complaint, RateSetter should now repay the additional fees, charges and any interest accrued as a result of the loan payment. RateSetter have calculated this to be £1,008.32 based on the two payments made towards the loan by Mr W which totalled £11,008.32. For the avoidance of any doubt, I do not uphold the claim made by Mr W against the substantive loan of £10,000. It's both fair and reasonable that RateSetter held him liable for the loan payment which I note has already been repaid.

My final decision

My final decision is that I uphold this complaint (in part) against Metro Bank PLC trading as

RateSetter and they're now required to finalise the complaint as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 13 December 2023.

David Perry
Ombudsman