

## **The complaint**

Miss A complains that Metro Bank PLC, trading as RateSetter, is holding her liable for a loan that was opened fraudulently in her name.

## **What happened**

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

In April 2022 a £14,000 loan was applied for in Miss A's name with RateSetter, via a third-party comparison website. The loan had monthly repayments of about £310 per month over a 60-month repayment term. The loan funds were transferred out of Miss A's bank account in equal instalments of about £7,000 on 25 and 26 May 2022 – with the funds sent to a third-party Electronic Money Institution (EMI) account (which I'll refer to as 'W').

Two direct debit repayments were made in May and June 2022, with no further made after this.

Miss A reported the loan had been taken out fraudulently to RateSetter in September 2022. She said a friend who lived abroad and that she'd known for many years – who I'll refer to as Mr A - applied for the loan in her name. She explained Mr A told her that he used her details for the loan to be paid as he had difficulties with his using card due to residing abroad. But he provided her emails showing it was his money which needed to be returned, and that he reassured her the two £310 direct debit payments taken from her account would be refunded.

RateSetter rejected the fraud claim. In short they said:

- Miss A confirmed that when she received the loan funds into her bank account, she spoke with her bank and they advised her to contact RateSetter. Despite this, Miss A didn't contact RateSetter and permitted either Mr A to take the loan funds back via W or she transferred it herself.
- Miss A failed to conduct due diligence to ensure Mr A would return the funds to RateSetter.
- Miss A failed to investigate where the loan came from and why it was paid into her account.
- Miss A's story has been inconsistent throughout their investigation.

Miss A complained to RateSetter but they confirmed that, while they would freeze interest, they would be holding her liable for the loan. This meant Miss A would need to repay what was borrowed.

The complaint was referred to the Financial Ombudsman. RateSetter confirmed they were only holding Miss A liable for the capital and that they'd submitted a request to credit references agencies for details of the loan to be removed from her credit file.

Our Investigator considered the complaint and thought it should be upheld. She was satisfied Miss A didn't apply for the loan, nor did she benefit from it. And that, while Miss A may not have contacted RateSetter as advised by her bank, she said it was evident that Miss A had been manipulated and deceived by Mr A – a friend – by being provided fake documentation showing the payments to W would be received by RateSetter. So, our Investigator didn't think it would be fair to hold Miss A liable for the loan as she considered Miss A had acted reasonably in the circumstances and was the victim of a cruel scam carried out by a friend that she trusted. Our Investigator recommended that RateSetter write off the loan and refund the two loan repayments to Miss A that were taken by direct debit from her account.

Miss A agreed with our Investigator's recommendation.

RateSetter did not and, in short, they added:

- They'd offered to write off the loan fees and interest, thereby only holding Miss A liable for the capital, as this has been the resolution to other similar cases as recommended by the Financial Ombudsman.
- Miss A confirmed she was aware loan funds had been paid into her account but chose to contact Mr A about returning the funds rather than contact RateSetter as she was advised to by her bank.
- Miss A didn't carry out any due diligence when she received the arrears letter. And there were two repayments made before Miss A contacted RateSetter in September 2022 to report the loan as fraudulent. This suggests Miss A was fully aware of her obligations under the loan agreement.
- Miss A didn't carry out any due diligence to investigate the source of the funds when she became aware of the loan funds, and also failed to verify where her friend was returning the funds to.
- At the time of the application, Miss A would've read and confirmed she understood the loan terms and conditions.
- If Miss A feels she has been taken advantage of then she should challenge the loss of funds with her own bank if it failed to notify her of any suspicious transactions.

Before I go on to explain the reasons for my decision, I want to clarify that I'll only be commenting on the circumstances of Miss A's complaint here. So, while RateSetter has referred to resolutions reached by the Financial Ombudsman on what they consider to be similar complaints, I'm reaching an outcome based on what I consider fair in Miss A's specific circumstances. It is also for Miss A to decide which firm(s) she wishes to raise a complaint against and she has chosen to complain about RateSetter. It's therefore for me to decide whether RateSetter has acted fairly here.

### **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've come to the same outcome as our Investigator and for largely the same reasons.

A consumer shouldn't be held liable for a credit agreement they didn't consent to. I've therefore considered whether, on balance, I think Miss A consented to this loan agreement. Having done so, I don't think she did. This is because:

- Miss A has provided her chat history with Mr A. This shows:

- Mr A explaining he went through a broker for the loan which is under his name – and him offering to provide a copy of the agreement to evidence this.
- Mr A saying he'd asked for the payment to be reversed and it was being looked into, although it's not something that's usually done.
- Mr A telling Miss A that companies cannot take money without consent from a bank account due to the 'rules'. And so, the money must go through W.
- Mr A explaining the money goes through W as they process card payments on W's behalf. And he advises Miss A to make two £7,000 card payments instead of a lump sum to avoid charges.
- Mr A provided illegitimate correspondence to Miss A that:
  - Provided confirmation that, due to withdrawal from the agreement, the funds must be repaid within 14 days of the money being received. And to do this, it needed to be paid via W – who trade as RateSetter on behalf of Metro Bank PLC.
  - Indicated the direct debit shouldn't still be active as the agreement had been settled and payments cancelled. And that RateSetter required that any bank transactions are forwarded to them to allow them to be reimbursed accordingly.
- Miss A has provided a newspaper article showing Mr A has defrauded others in a similar way.
- Although RateSetter has referred to inconsistencies in Miss A's story during their investigation, I've found her explanation for what happened both consistent and persuasive.
- Miss A reported the matter to the police and Action Fraud.

Taking all of this into consideration, I'm satisfied Miss A neither applied nor consented to the loan. But instead, I consider it most likely that Mr A applied for the loan in her name without her permission.

I've therefore gone on to consider whether it would be reasonable for RateSetter to pursue Miss A for the debt outside of the loan agreement. But I don't think that would be fair here. This is because, from what I've seen, I'm not persuaded Miss A had knowledge Mr A had applied for the loan in her name. Nor am I satisfied that she has benefitted from the funds, as they were subsequently sent to an account in Mr A's name with W shortly after.

I've considered RateSetter's point that Miss A would've been fully aware of her obligations under the loan agreement given there were two successful repayments made by direct debit before she reported the loan as fraudulent in September 2022. But Miss A's chat history with Mr A shows she was tricked into thinking the loan had been applied for in his name, not hers. And Mr A went as far as providing illegitimate correspondence to deceive Miss A into thinking the credit agreement had been cancelled and that any payments made towards the loan would be reimbursed accordingly. I'm therefore not persuaded that, at the point the loan funds left Miss A's account, she knew the loan had been applied for in her name.

I've also given careful thought to RateSetter's view that Miss A failed to carry out appropriate due diligence to investigate the source of the funds when she became aware it'd come from a loan, or upon receiving arrears letters. Nor did Miss A verify where her friend was returning the money to. And that she also ignored the advice of her bank by not contacting RateSetter directly about returning the loan funds.

Although it seems Miss A knowingly moved the loan funds, or allowed it to be moved, out of her bank account, I don't think her actions were unreasonable here – or at least to the degree it would be fair for RateSetter to pursue Miss A for the debt outside of the loan agreement. This is because Miss A was sadly the victim of fraud by a long-term friend whom

she had known many years and trusted, and that she genuinely believed she was assisting with a banking issue. And while Miss A did become aware the funds originated from a loan, as I've said, I'm satisfied that she was being manipulated by Mr A into believing that the funds were his and that any repayments she'd made would be reimbursed. And at the point she received the arrears letters, the funds had already left her bank account – so, they were received too late for it to have been brought to Miss A's attention that the funds came from a loan applied for in her name.

I've also thought carefully about Miss A's actions in respect of not contacting RateSetter about the return of the funds after being advised to do so by her bank. I accept that, had Miss A done so, this could've prevented the funds being lost – as RateSetter would've likely identified the loan had been applied for fraudulently as they wouldn't pay the funds into another person's bank account. But even though Miss A didn't do this, I don't think this was wholly unreasonable in the circumstances. This is because, as it's been explained, Mr A was a long-term friend of Miss A that she trusted – to which Mr A relied upon this trust as part of the fraud. And so, at this point, Miss A didn't suspect the loan had been applied for fraudulently in her name and she didn't have sufficient reason to question Mr A's motives. She was, instead, focussed on resolving what was seen as a banking administrative issue and relied on the help of a trusted friend to ensure the funds – which she believed came from a loan he applied for in his name – were returned.

Mr A used sophisticated methods to deceive Miss A into thinking the funds came from a loan in his name by providing illegitimate correspondence from RateSetter. And, importantly, into thinking that the funds needed to be paid via W as they traded as RateSetter on behalf of Metro Bank PLC. Although this isn't true, I think it's understandable as to why Miss A believed the correspondence was genuine as it appears legitimate on face value and she trusted what her friend was telling her. Miss A's belief that she was returning the funds to the correct party is demonstrated in payment screens for the two £7,000 transactions she has provided which show 'RateSetter' as the payee.

It follows that I don't think Miss A is responsible for what happened and, because of this, it wouldn't be appropriate to attribute responsibility to her.

I'm also satisfied Miss A hasn't received funds from her own bank in lieu of the loan money paid away from her account. As such, RateSetter not pursuing her for the debt won't put Miss A in a position of betterment. For these reasons, I don't think it is fair for RateSetter to hold Miss A liable for the loan. And so, to put things right, I think they should write off the outstanding amount on the loan and remove any reference of it with credit reference agencies.

On a final note, I've considered that Miss A has made repayments towards the loan. I've therefore thought about whether these should be returned and I think that would be fair here. This is because I'm satisfied Miss A didn't consent to the credit agreement, nor did she knowingly make the repayments towards a debt she considered to be in her own name. And given she hasn't had any benefit of the loan funds; I think it should be returned to her.

### **My final decision**

My final decision is that I uphold this complaint. I direct Metro Bank PLC, trading as RateSetter, to:

- Write off the outstanding amount on the loan.
- Refund any repayments Miss A has made towards the loan.
- Remove any reference of the loan with credit reference agencies.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 25 March 2024.

Daniel O'Dell  
**Ombudsman**