

## **The complaint**

Mr B has complained Metro Bank PLC, trading as RateSetter, is asking him to repay a personal loan he didn't take out.

## **What happened**

In July 2023, Mr B fell for a scam. This was to enable him to get interest-free loan quotes. After being approached by a third party on WhatsApp who told them they were employed by an app he held, he followed their instructions to provide them with login details for his app, as well as his personal details. This app is all about credit reports and financial information, so Mr B believed what he was being told. He accepts he took no action to verify what was going on but saw no reason to doubt being approached by a financial company using WhatsApp.

He was asked by the fraudsters to share the emails he then received. This followed an initial loan for £12,500 being taken out in Mr B's name with a company I'll call Z. Mr B noted another loan had been taken out with RateSetter although he'd told the fraudsters – who he still believed were genuine – that he didn't want a loan taken out in his name. He then received a text message confirming no payments were due.

This scam then proceeded with Mr B being told he could keep part of the loan proceeds but needed to make transfers and part pay in cash. Despite Mr B's concerns that this didn't seem right, he proceeded to make payments from his bank account with H. Over a period of a week, Mr B made various payments both electronically and in cash. He'd also been physically threatened by the fraudsters and felt he was forced to continue making payments. A further loan was also made in his name with H too.

In August as the scammers disappeared, Mr B complained to H and then followed this complaint up with complaints to RateSetter and Z. H cancelled the £17,460 loan which had been taken out in Mr B's name and also refunded him money Mr B had lost from his own account. Funds relating to the two other loans were not refunded.

Mr B brought his complaints to the ombudsman service. In providing their evidence to our service, RateSetter offered to remove loan fees and interest charge from Mr B's loan.

Our investigator was able to view some of Mr B's correspondence with the scammer and RateSetter's application evidence as well as the checks they carried out. He also got a full report from H about their fraud investigation.

He believed Mr B hadn't made the application but considered Mr B should have been aware that loans had been applied for and the large funds in his account with H were the result of this. He asked RateSetter to remove interest and charges from the loan as well as remove any negative information from Mr B's credit record.

RateSetter agreed with this outcome but Mr B didn't.

Mr B's complaint has been referred to an ombudsman for decision.

I issued a provisional decision on 4 March 2024. I believed the evidence showed Mr B had not applied for the loans himself or benefitted in any way. In fact he'd initially lost further funds which H had agreed to refund. I told RateSetter I would be asking them to write off the loan in full.

Mr B accepted this outcome. RateSetter disagreed as they believed their evidence, including a phone call with Mr B, showed that he knew what was happening despite agreeing he was the victim of a scam. They were also unable to verify all the funds were sent to the third party.

I now have all I need to complete my final 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, I've reached the same outcome as I did in my provisional decision. I'll explain why.

Where there is a dispute about what happened, I have based my decision on the balance of probabilities. In other words, on what I consider is most likely to have happened in the light of the evidence.

Firstly I can see the credit agreement was taken out July 2023. How this happened isn't really in dispute and was covered in detail in our investigator's view of January 2024. I don't intend to repeat what happened as the details are understandably distressing for Mr B. However, I can confirm I have read the evidence carefully and am satisfied Mr B didn't take out the credit agreement himself. However he would have been aware, and admits he was, that loans were being taken out as his genuine email address was being used by RateSetter.

RateSetter appear to accept Mr B didn't take out the credit agreement but argue his use of the app, along with his sharing of personal details, meant he contributed to the loan being taken out. I don't dispute this, but I believe RateSetter's approach ignores what was happening at the time and that Mr B was being viciously scammed. RateSetter believes that nobody involved in financial services would be offering services by WhatsApp, but I disagree with this. Utility companies, for example, use WhatsApp regularly to discuss issues with customers so I'm not convinced Mr B would naturally have been concerned about the scammers' use of WhatsApp. I see RateSetter accept Mr B was the victim of a scam.

It's key to note that as I believe Mr B didn't take out the agreement, then he has no contractual agreement with RateSetter.

I note that RateSetter's evidence indicates they were aware that this loan was applied for using the app. And based on this app's increased use within third party scams, they could have taken further action to check what may be going on.

The scammers managed to apply for three loans in Mr B's name within five days but the loan with RateSetter was taken out second on 25 July. I believe they may have been able to see that other loans had been applied for in Mr B's name around the same time. So along with the data that this loan was applied for through an app, this may have alerted them to issues around this application. However RateSetter took no action.

From Mr B's testimony that he was concerned about loans being taken out – and I can see he already had an existing personal loan with H so I believe would have been concerned

about the impact on his credit record – I’m satisfied the evidence indicates that this loan was taken out without Mr B’s consent.

Like our investigator I believe Mr B could have been more alert to what then followed and the actions he took in transferring money to the scammers and the cash withdrawals he made from his account with H. But I can see that Mr B was under physical threat at this stage and did try to get out of the arrangement but by this time, those scamming him had met him and held all his personal details, he was very conscious of the threats being made against himself and his family.

It’s important to note that we don’t consider aspects of contributory negligence when reviewing cases where credit has been taken out fraudulently.

In the evidence provided to us by H, I can see they wrote off the loan applied in Mr B’s name on 28 July and agreed that he was the victim of a scam. Accordingly they repaid money that was Mr B’s – as opposed to money credited to his account from Z and RateSetter. I find this difficult to ignore when reviewing Mr B’s complaint against RateSetter particularly as this took place after the earlier loan applications. I’m satisfied Mr B has in no way benefitted from what happened. In fact as can be seen by the evidence provided by H, Mr B used his own funds to pay the scammer.

I note RateSetter agreed to only require the capital amount of £10,000 to be repaid by Mr B.

### **Putting things right**

Taking all the evidence into account, I am instructing them to write off the loan in full as I believe this is fair. They must therefore stop asking him to repay this loan.

All information must be removed from his credit record. As Mr B didn’t take out this credit agreement, I don’t believe there’s any basis for RateSetter placing any data about this loan on his credit record at all.

### **My final decision**

For the reasons given, my final decision is to instruct Metro Bank PLC, trading as RateSetter, to:

- Write off the loan of £10,000 taken out in Mr B’s name in July 2023;
- Stop asking him to repay anything from this loan; and
- Remove all data about this credit agreement from Mr B’s credit record.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 1 May 2024.

Sandra Quinn  
**Ombudsman**