

The complaint

Mr C, through his representative, complains that Metro Bank PLC trading as RateSetter Lenders (RateSetter) lent to him but failed to conduct proportionate checks at that time and could have done more before providing the funds.

What happened

Mr C took one loan from RateSetter which was a Peer to Peer lending arrangement in October 2018. This was before Metro Bank purchased that business in September 2020. All agreements arranged before that were transferred to Metro Bank.

Mr C received loan funds of £5,000 for ‘*debt consolidation*’ and it was due to be repaid over 36 months at £162.62 a month. There was a loan fee of £540 as well which was added to the debt.

Mr C had made all his contractual repayments until April 2020 when RateSetter gave him a formal breathing space and from July 2020 he resumed his contractual repayments. The total to repay was £5,998.32 and Mr C paid it off on 24 December 2021.

Mr C complained to RateSetter in October 2023, he received its final response letter (FRL) in the same month and Mr C referred it to the Financial Ombudsman Service in February 2024.

One of our investigators looked at it and thought that RateSetter had to put things right for Mr C. It did not agree, and the unresolved complaint was passed to me to decide.

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.

We have set out our general approach to complaints about unaffordable/irresponsible lending - including all the relevant rules, guidance, and good industry practice - on our website.

This loan was a ‘*non-commercial agreement within the meaning given in the Consumer Credit Act 1974.*’ And was described in the summary document as a non-commercial peer to peer loan.

The relevant regulations were formulated in the Consumer Credit Sourcebook (CONC) created by the Financial Conduct Authority (FCA). The wording of CONC altered, but not the import, in November 2018. I have reviewed the wording in CONC applicable in October 2018 as the loan was approved then.

The rules and regulations in place required RateSetter to carry out a reasonable and proportionate assessment of Mr C’s ability to make the repayments under the loan agreement. This is referred to as an “affordability assessment” or “affordability check.” The checks had to be “borrower-focused,” so RateSetter had to think about whether repaying the loan would be sustainable. In practice this meant that the RateSetter had to ensure that making the repayments on the loan wouldn’t cause Mr C undue difficulty or

significant adverse consequences.

That means he should have been able to meet repayments out of normal income without having to borrow to meet the repayments, without failing to make any other payments he had a contractual or statutory obligation to make and without the repayments having a significant adverse impact on his financial situation.

In other words, it wasn't enough for RateSetter to approach the loan application from the perspective of the likelihood of getting its money back. RateSetter had to consider the impact of the loan repayments on Mr C. Checks also had to be 'proportionate' to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon several factors including – but not limited to – the circumstances of the consumer (e.g., their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that a reasonable and proportionate check ought to have been more thorough:

- the lower a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income).
- the higher the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income).
- the greater the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr C's complaint.

Mr C had applied for the loan on-line and he had told RateSetter that he was self-employed. He earned around £24,000 a year and that translated into a monthly income of around £1,633. He declared that he was a homeowner with a mortgage and paid around £375 a month for that. He had three dependents.

RateSetter told us when it sent to us its file about the complaint that:

'As per our criteria we use 45% of the applicants [sic] net monthly income for credit commitments and the remaining is used for the applicants [sic] mortgage or rent and other living expenses. After taking into account the customers other credit commitments and taking into account the monthly repayment to RateSetter would be £166.62 per month, we worked out this loan was affordable.'

RateSetter had told us that it also looked at two months' worth of bank account statements before lending, but after I had received the complaint and reviewed it I asked RateSetter for the copy statements that it used when assessing the loan. It confirmed that in Mr C's case it had not taken or reviewed bank account statements.

RateSetter did obtain a credit search for Mr C before it lent to him. A summary affordability table it has sent to us recently indicates that it had calculated Mr C had £890 of revolving debt payment commitment and a fixed debt commitment of £166 each month. So, it had worked out that Mr C would have had £488 'surplus' after deducting the £166.62 for the RateSetter loan with an income of around £1,633 each month. So, it considered the loan affordable. My calculations using the RateSetter figures in that affordability table do not come to the same 'surplus' figure.

I also asked RateSetter what it had done to clarify the business from which Mr C took his drawings as Mr C had declared he was self-employed. This was my first element of concern about Mr C's application. RateSetter's answer was unsatisfactory as it explained to me that Mr C's income was electronically verified through a credit reference agency (CRA) electronic income verification tool and it had confirmed Mr C's income. I don't consider this to have been appropriate for a self-employed individual. It's likely that a person's income in that position could vary depending on the business. And simply checking the amount of money that may have credited an account was not good enough in my view.

So, I asked Mr C about this and he explained that he used to have a business of his own which closed in 2016 and then he became a driver for his partner's business. Mr C explained:

'All income into the joint account would just be shared between us, we didn't really pull wages out for each other we just kind of used the account for things we needed.'

So, it was a very loose arrangement and if RateSetter had checked about Mr C's business drawings in 2018 this is the answer it would have been given. And so, with no business and with no formal income I'd consider that to have been matters to place RateSetter on alert and prompt it to have made more enquiries. I don't think it did that.

What RateSetter has described in its submissions to us and the affordability table it has sent to us do not correlate. And if it had calculated that Mr C had £890 each month to pay for debt plus another fixed debt repayment of £166 (£1,056 in total) then that would have amounted to a sizeable proportion of what it had been told was Mr C's income - around 64%. Which is my second element of concern.

RateSetter has sent to us a copy of the credit search carried out in September 2018 and I've reviewed it. And again, the information I have from the credit search carried out in September 2018 bears little resemblance to the figures in the affordability table we received recently.

The September 2018 credit search report says that Mr C had 13 accounts, two of which had been opened within the previous six months. His mortgage was £132,000, his credit cards total debt balance was just under £14,000 and his 'debt to limit ratio' was 90%.

Mr C had an overdraft facility which at the time of the search was £497 in debt.

His mortgage was costing £750 a month and so the figure Mr C had given (£375 each month) was the 50% figure as he seemed to have been saying that he may have split the cost with his partner. More information on this, which I don't think RateSetter obtained, showed that this was not the situation.

The credit search credit card debt was just under £14,000 which at 3% minimum payment each month would amount to £420 and at 5% that would have been around £700 a month. But that would not have included much of an allowance for reduction of the principal credit card debt each month. I do have to factor in that the £5,000 loan may well have been to assist him to reduce some of that debt.

Our investigator's view was that the information Mr C had given on the application may have appeared to show he had enough disposable income to manage the repayments, but the credit file data indicated that there was an underlying issue and that he was experiencing financial difficulty. This was because he was at 90% of his credit card limit and our investigator thought that RateSetter had not acted fairly in granting the loan.

I'd add to this by saying that the credit search showed that Mr C had exceeded at least two sets of limits on two of his accounts in the months leading up to this application – a further sign that perhaps Mr C was experiencing financial difficulties.

So, the combination of RateSetter having failed to investigate the self-employed detail that Mr C had told it, plus the results from the credit search, then I think it ought to have reviewed Mr C's financial situation in more depth before approving a £5,000 loan.

If it had, then in relation to the explanation I received from Mr C about his self employed status then that indicates to me that he had no business. And when reviewing Mr C's bank statements, he has sent to us, they related to a joint account. I asked Mr C if he and the other account holder could identify which of the receipts into the account counted as Mr C's income and which of the outgoings counted as his. Mr C's response was a repeat of what he'd told us earlier which was they dipped into the account as and when needed and shared it all.

And reviewing the bank statements I noticed some anomalies and I asked Mr C about the details which indicated he was receiving £850 rent money from a third party, but also paying towards a mortgage and paying rental to another party. Mr C explained:

'We moved up north from [a county near London] in 2009, we rented a property north which was the rent payments (£750). We kept our property in [a county near London] which was the mortgage (£751) which we rented out for (£850).'

And with that information, upon looking again at the bank statements I came to this conclusion: apart from a couple of cheques being paid into the account in August 2018 and September 2018, plus the rental income of £850 (which covered their mortgage commitment leaving £100 surplus) and a tax credit for the other account holder, Mr C and his partner had no income.

So, I think that the £5,000 loan was lent irresponsibly because RateSetter did not even check his self-employed status and had not investigated the adverse entries on the credit search. And if it had it would have realised he had no business, a rental and mortgage liability combined and no formal income. Plus, Mr C had dependants to consider.

I uphold the complaint and I think RateSetter should put things right for Mr C.

Putting things right

RateSetter should do as follows:

- refund all interest and charges Mr C paid to the loan
- pay interest of 8% simple interest* a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement*;
- remove any negative information about the loan from Mr C's credit file;

* HM Revenue & Customs usually requires RateSetter to take off tax from this interest. It must give Mr C a certificate showing how much tax it's taken off if he asks for one.

My final decision

My final decision is that I uphold the complaint and I direct that Metro Bank PLC trading as RateSetter does as I have indicated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 1 July 2024.

Rachael Williams
Ombudsman