

The complaint

Mr P complains that Metro Bank PLC trading as RateSetter (RS) lent to him irresponsibly.

What happened

Mr P took out two loans from RS as shown:

Date	Amount/Purpose	Fee	Payments	Notes
September 2016	£5,000 – debt consolidation	£85.50	£147.99/ 36 months	Repaid November 2016 – lump sum £4,821
March 2017	£9,800 – debt consolidation	£106.92	£288.79/ 36 months	Repaid July 2017 – lump sum £8,852

Both loans were for debt consolidation.

Mr P complained. He said RS didn't complete the necessary checks as he had a gambling problem at the time. Had they known this, the firm wouldn't have given him the loans.

Because of this, he had entered a debt management Plan. He says RS should refund the interest and charges he's paid.

Although Mr P's complaint was out of time (as the loans were more than six years before he complained), RS gave consent for us to consider it.

RS said Mr P passed all their credit checks which included his credit profile, credit history and affordability. This included Mr P's records at credit reference agencies (CRAs). They said Mr P hadn't told them about his gambling. RS declined Mr P's complaint.

Mr P brought his complaint to us. Our investigator upheld it. She said:

First loan:

- At the time of the first loan, Mr P had other debts of £12,761, including one large loan. There weren't any adverse marks such as defaults or CCJs on his credit records.

- But the large loan (balance £11,971) had only been opened two months before.

- He had also opened a new credit card account within three months – increasing his available credit by 71%. So he had taken out new debts of over £23,000 in three months (including the RS loan).

- So, because of that, RS should've investigated Mr P's circumstances more closely and asked for his bank statements – and these would've shown his gambling payments. And therefore she said it was unlikely RS would've provided the first loan.

Second loan:

- Looking at Mr P's credit file, she could see that Mr P had taken out more than £41,000 of unsecured loans between September 2016 to November 2016; including the first RS loan. This included a new loan of £29,449.

- He had repaid those within four months of opening them.

- But – because of Mr P's appetite for new borrowing, RS should've done more checks.

- And if RS had looked at Mr P's bank statements, they would've seen he was gambling significantly, and not lent the money.

Our investigator said RS shouldn't have agreed both loans. They should refund any payments Mr P made in excess of the amounts lent (as he had repaid the loans) and add 8% per annum interest to the overpayments. Any adverse information added to Mr P's credit file should also be removed.

Mr P accepted this, but RS didn't. The firm said Mr P had passed all their credit checks at the time of the applications. On the first loan, these showed he had a surplus of £629 per month after paying debt and household expenses; and on the second loan, he had £517 spare each month. Both were enough to make the payments to the new RS loans.

RS also said that as part of the application process, Mr P was asked if there was anything which might affect his ability to make the repayments – he didn't say there were. And Mr P paid off the loans early and didn't raise any concerns regarding financial difficulty at the time of the applications, or since.

RS asked that an ombudsman look at the complaint and so it has come to me to do that.
(continued)

I reached a provisional decision which said:

All lenders have an obligation to lend money responsibly. We must check whether RS acted in line within the Financial Conduct Authority (FCA) rules on creditworthiness assessment as set out in its handbook, (CONC) section 5.2. These say that a firm must undertake a reasonable assessment of creditworthiness, considering both the risk to it of the customer not making the repayments, as well as the risk to the customer of not being able to make

repayments. We look at:

- Whether the lender completed reasonable and proportionate checks to satisfy itself that the borrower would be able to repay any credit in a sustainable way?
- If reasonable and proportionate checks were completed, did the lender make a fair lending decision bearing in mind the information gathered and what the lender knew about the borrower's circumstances?
- And a reasonable and proportionate check would usually need to be more thorough:
 - o the lower a customer's income, and the higher amount to be repaid.
 - o the greater the number of loans and frequency of loans.
 - o the longer the term of the loans

It's important to note that the checks must be proportionate to the amount being lent – so the higher the amount, the greater the checks must be, and the lower the amount, then fewer checks can be made.

I looked at what happened at the time of each application.

Loan - £5,000: September 2016:

I can see that Mr P declared there was annual household income of £85,000; of which his own income was £42,500 (net £2,664 per month). He said he had a mortgage of £260,000 (payments £1,275 per month). He said he had one credit card debt of £5,000. There weren't any defaults or CCJs.

Based on this, I can see that RS worked out that Mr P could afford the repayments on the new loan.

The crux of looking at the first loan comes down to Mr P's other commitments – were they significant such that RS should've asked more questions about his circumstances. If so, then they would've asked to see his bank statements – which did show gambling payments being made, and income received.

Mr P's credit file (seen by RS) showed Mr P had:

- a mortgage balance of £211,348
- a loan balance of £11,971.
- three credit cards with total limits of £15,550.

But RS could also see:

- The balances on the credit cards were only £68, and so the payments were low.
- All payments on the loans/credit cards were being made – there weren't any adverse markers on his credit records (such as missed payments or defaults).
- So, Mr P was paying his way.
- While Mr P had taken out new loans of almost £17,000 in the last few months, I don't think that was necessarily a 'red flag' that RS needed to be concerned about – as against the household income and Mr P's own income.
- And I consider that this, together with his regular salary – and a significant household income meant that RS completed the necessary and proportionate checks.

This means that I don't consider RS needed to make any more checks or ask questions of Mr P on the first loan (for example, by asking to see his bank statements). And as RS noted, he had not advised the firm he had a gambling problem – so I can't expect them to have known that.

Loan - £9,800: March 2017:

I can see that Mr P's circumstances had changed a little. At this time, he didn't declare a household income and relied on his sole income of £44,000 (which had increased a little).

But I can also see:

- Mr P said his mortgage payments had reduced to £600 (half of what it was before).
- He declared he had a credit card with a balance of £4,800.

Mr P's credit file showed he had (at the time of his application):

- A Mortgage of £208,412.
- A Loan balance of £6,691.
- Credit card limits of £10,650, balances £3,811.

I can see that Mr P had made all the payments to his debts – there were no missed payments or adverse marks on his credit file - so he was paying his way.

And – he had paid off the first loan from RS after only two months.

So, on one hand, I can see why RS agreed to the second loan, but that's not the end of the story.

Importantly: as our investigator identified – Mr P had taken out two large loans (in addition to the second RS loan) and these were showing on his credit file. I need to consider the effects of those on his complaint.

There were two new loans:

November 2016: £29,449 - repaid January 2017.

September 2016: £7,000 – repaid January 2017.

Our investigator considered that this was an indication that Mr P was borrowing a lot of money and RS should have asked more questions.

And on balance, I think it's reasonable to expect RS to have done so. Between September 2016 and November 2016, Mr P borrowed about £41,000 on unsecured debts. And against an annual salary of £44,000 (net of tax say £24,000), this was a lot.

And importantly, RS could see that he paid off those loans within a very short space of time. And – it's very unlikely that they could've been repaid by Mr P's salary, and something else was going on to enable him to pay off so much money in a short space of time. So, I think it's reasonable to expect RS to have asked Mr P more questions. This would've included looking at Mr P's bank statements.

And had they done so, they would've found out that Mr P likely borrowed the money to fund his gambling, and (probably) paid them off with his winnings. Because of the nature of the

disclosure of our decisions, I won't detail the extent of Mr P's gambling, but it was clearly significant. Our investigator set this out.

If RS had seen what Mr P's gambling was, they would likely have concluded that it wasn't responsible to provide the second loan – as it meant they couldn't consider with any confidence that Mr P could make the repayments on a sustainable basis.

So – my provisional decision is that RS lent responsibly on the first loan and no further action is required. But by the time of the second loan, the information on Mr P's credit file meant they should've asked more questions. And had they done so, it's likely that they would've declined the second loan.

Therefore, my proposed remedy is for the second loan.

RS should refund the interest and charges (including the loan fee of £106.92) on the second loan. This will then put Mr P back in the position he would've been in if RS hadn't given him the second loan. He has paid it off and had the use of the money – and so there isn't a question of refunding any of the capital amount lent. RS should also remove any adverse marks added to his credit file.

Responses to the provisional decision:

Mr P agreed, but RS didn't. The firm said they'd completed the checks at the time of the loan application and found the loan payments were affordable. So, they didn't agree with my view that the second loan was provided irresponsibly.

I now need to consider these comments and make a 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.

I've considered what RS said, but it doesn't change my decision. The provisional decision said that I could see why RS agreed the second loan; but the firm haven't particularly commented on why the main reason why I reached the provisional decision – which is the amount of large loans Mr P had taken out and repaid within the last six months (which they could see from his credit file).

I said "And on balance, I think it's reasonable to expect RS to have done so. Between September 2016 and November 2016, Mr P borrowed about £41,000 on unsecured debts. And against an annual salary of £44,000 (net of tax say £24,000), this was a lot."

Because to take out (and repay) such a large amount of credit – seems to me to be a reason to look further into Mr P's circumstances, as I set out.

Therefore, my final decision is unchanged from the provisional decision, and RS must do what it set out.

My final decision

I uphold this complaint. Metro Bank PLC trading as RateSetter must:

- refund the interest and charges (including the loan fee of £106.92) on the second loan.

- remove any adverse marks added to Mr P's credit file regarding he second loan.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 4 June 2024.

Martin Lord
Ombudsman