

## **The complaint**

Mr A complains that Metro Bank PLC trading as RateSetter irresponsibly agreed a loan for him.

Mr A brought his complaint to us via a representative but I will refer to him throughout for simplicity.

## **What happened**

RateSetter agreed a loan of £20,220 for Mr A in October 2014. This included a loan advance of £20,000 plus a loan fee of £220. The total amount owed was £24,064 to be repaid at £401 a month over 60 months (figures rounded).

I understand that Mr A missed two payments, one in April and another in June 2016, both of which he paid within a few weeks. Mr A repaid the loan in full in August 2016.

Mr A complained to RateSetter that the loan was unaffordable for him and should not have been agreed. He also said that RateSetter didn't support him when he had difficulty meeting his repayments. Mr A said that he was left with no choice but to take out another loan to repay this.

RateSetter said it considered several factors when assessing the affordability of the loan for Mr A, including his credit history and information he'd provided in his application. It didn't agree it had been irresponsible to lend or that it failed to offer him support.

RateSetter didn't uphold Mr A's complaint and he referred it to us. One of our investigators looked into the complaint and recommended that it be upheld in part. They concluded that RateSetter didn't act responsibly by lending to Mr A but that it didn't treat him unfairly later on.

Neither RateSetter nor Mr A agreed with this recommendation and the complaint has been 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.

I've also had regard to the regulator's rules and guidance on responsible lending (set out in its consumer credit handbook – CONC) which lenders, such as RateSetter, need to abide by. RateSetter will be aware of these, and our approach to this type of lending is set out on our website, so I won't refer to the regulations in detail here but will summarise them.

The regulations at the time stated that a lender should take into account more than assessing the borrower's ability to repay the credit. A lender needed to assess a borrower's ability to meet the repayments in a sustainable manner. In other words, RateSetter needed to check that Mr A could meet his repayments out of his usual means for the term of the

loan, without having to borrow further and without experiencing financial difficulty or other adverse consequences. The checks needed to be proportionate to the nature of the credit (the amount borrowed, for example) and to Mr A's particular circumstances.

The overarching requirement was that RateSetter needed to pay due regard to Mr A's interests and treat him fairly. CONC gave an example of contravening this as 'targeting customers with regulated credit agreements which are unsuitable for them by virtue of their indebtedness, poor credit history, age, health, disability or any other reason.

The questions I've considered are whether or not RateSetter carried out a proportionate affordability check before lending to Mr A? If not, what would a proportionate check have shown? Did the checks RateSetter carry out show anything of concern? Did RateSetter treat Mr A fairly and with due regard to his interests when it offered him the loan? Did it treat him unfairly in any other way, including whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974?

RateSetter provided the information it relied on when conducting its affordability assessment for the loan including Mr A's application form, information from his credit file and its income and expenditure records.

Mr A gave his salary as £30,000 and RateSetter relied on a net monthly income figure of £2,035 in its assessment. Mr A's credit file showed that he held a mortgage with monthly repayments of £567, two unsecured loans with balances of £12,336 and £14,414, and a revolving credit balance of £337. While there was no adverse information shown on Mr A's credit file this was the third loan he'd applied for that month.

RateSetter noted that Mr A paid amounts of £246 and £298 towards his loans and £17 towards his revolving credit each month, a total of £561. It estimated that he spent £616 on other costs, leaving him with £291 a month. This wasn't enough to meet his loan repayments of £401 without consolidating some of his existing debt. RateSetter estimated that if Mr A cleared one of his large loans with its new loan, he would cease his monthly payments of £250 and instead pay £401, which would leave him with £140 spare a month. RateSetter concluded that its loan would be affordable for Mr A.

Although the loan was ostensibly for consolidation, agreeing it increased Mr A's level of debt to almost £39,000, more than his annual income. It increased his monthly debt repayments from £561 to £712 and committed Mr A to spending almost two thirds of his estimated monthly income on debt, including his mortgage.

As mentioned, RateSetter needed to do more than simply check the loan would be affordable. It needed to check that Mr A would be able to meet his repayments sustainably over the lifetime of the loan, which in this case was five years. It seems to me that leaving Mr A with £140 of disposable income to meet any unaccounted for or unexpected costs over this period of time wasn't likely to be sustainable, given how much of his income would be tied up with debt repayments.

Altogether, I think RateSetter should have seen that Mr A was likely to have been overindebted when he applied for this loan, and I can't say it treated him fairly or with due regards to his interests when it agreed further credit for him.

Mr A provided his bank statements for the months prior to his application which shows a £14,500 transfer into his account referenced 'loan funds' just before this loan was agreed. I don't know the details or purpose of this loan but it seems likely to me that Mr A's actual debt levels were even higher than RateSetter's checks revealed, and it confirms that Mr A was taking on unmanageable debt with this loan. Mr A said he eventually borrowed to repay the

loan and, while I haven't seen evidence of this, I think it's unlikely he was able to repay the loan with a lump sum from his own means.

I've concluded that RateSetter didn't make a fair lending decision here and was irresponsible to enter into the agreement.

Mr A also complained that RateSetter didn't treat him fairly when he had difficulty meeting his loan repayments. He said that RateSetter didn't offer to freeze interest and charges or suggest a reasonable repayment plan, and was hostile in its approach to recover funds to the extent that he took out another loan to clear this one.

RateSetter provided the account notes and customer contact records for Mr A. I can see from these that he asked for a payment holiday on 14/09/2015 which RateSetter declined. It offered to change the direct debit date from 27/09/2015 to 15/10/2015 which Mr A accepted. RateSetter also told Mr A that he would need to call to change the direct debit date again if he needed to.

Mr A met his repayments until April 2016 when his direct debit was returned. The payment was collected three weeks later. Mr A also missed a payment in June and this was collected four weeks later. The balance was fully paid and the account closed in August 2016.

The contact notes show that when Mr A's direct debit was first returned in April 2016, RateSetter sent him an email and text to let him know and a follow-up text asking him to get in touch to discuss his account. When the second direct debit request failed a few days later, it sent the same communications.

When Mr A's direct debit was returned in June, RateSetter sent him an email and text message to let him know. It followed these up with five text messages and two emails over July and August letting him know his account was in arrears and asking him to get in touch to discuss this, before sending him a letter on 8 August about the arrears.

I appreciate that Mr A feels strongly about the contact he had from RateSetter and the fact that it didn't offer him a payment holiday. However, I can't say that RateSetter got something wrong in letting Mr A know his direct debit had failed, that his account was in arrears and asking him to get in touch to discuss it. And I haven't seen any evidence that Mr A asked RateSetter for support around this time.

When Mr A asked for a payment holiday in 2015 he told RateSetter that his father needed important surgery and he would need to pay towards it. I accept that this must have been a stressful time for Mr A and I'm sorry to hear of his difficult circumstances. It is possible that RateSetter could have gone further in its support. However, it did move his payment date by almost three weeks and let him know that moving it again was an option for him. Mr A didn't ask for another change of payment date and continued with his payments for a further six months.

Having considered this point carefully, I haven't found that RateSetter treated Mr A unfairly once the account had been opened. And I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here.

### **Putting things right**

I've concluded that RateSetter was irresponsible to have agreed a loan for Mr A in October 2014. I think it's fair that he repays the money he borrowed as he's had the use of it but I don't think it's fair that he pays any interest, fees or premiums associated with the loan.

To put things right for Mr A, RateSetter should:

- a) refund all payments that Mr A made above the amount he was given; and
- b) add 8% simple interest per annum\*\* on these overpayments from the date they were paid until the date this complaint is settled; and
- c) remove any adverse information about this loan from Mr A's credit file.

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

### **My final decision**

For the reasons I've explained above I am partly upholding Mr A's complaint about Metro Bank PLC trading as RateSetter and it now needs to take the above steps to put things right for him.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 August 2024.

Michelle Boundy  
**Ombudsman**