

complaint

Mrs R complains that Retail Money Market Ltd (trading as RateSetter) won't reimburse her for a £25,000 loan that was taken out fraudulently in her name.

background

Mrs R says she met a man on a dating website and thought she was having a relationship with him. He asked her to transfer some money on to a colleague for him. She agreed. Mrs R says that when the £25,000 was credited her account she couldn't see where it had come from. It looked like it had come from another bank account – not RateSetter. As she had no reason to suspect the £25,000 had come from a loan in her name, and she hadn't received any loan paperwork, she transferred the money on to another account. Later she realised she'd been a victim of a scam. She asked her bank for a statement. At this point she saw that the money had been deposited by RateSetter.

RateSetter doesn't dispute the fact that the loan was taken out by a third party. But it says it followed its correct procedures and couldn't have reasonably suspected that the application wasn't made by Mrs R. It says Mrs R would've been able to see that the money was deposited by RateSetter. So she should've noticed this and realised that the money had come from a loan.

Our adjudicator recommended that Mrs R's complaint should be upheld. She said Mrs R transferred the money very quickly after she received it. And Mrs R's bank has told us that she may not have been able to see who had deposited the money at this time. In any case our adjudicator was persuaded that Mrs R was taken in by the scam. So she thought that even if Mrs R had seen the name RateSetter, it's unlikely that she would've realised what was happening. So she said it wouldn't be fair to require Mrs R to repay the outstanding balance of the £25,000. And it should reimburse her for any repayments she has made to this loan.

RateSetter disagreed and asked for the complaint to be reviewed. Mrs R has also asked that her complaint is reviewed.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And I also think this complaint should be upheld. I'll explain why.

RateSetter says it isn't sure that Mrs R was the victim of a fraud. And even if she was, she was negligent when she gave away so much information.

But I disagree. On balance, I'm satisfied that Mrs R was the innocent victim of a fraud. I'm persuaded by what she has told us. And I find that she has been credible and consistent with our service. I can understand why she transferred the £25,000 on in three separate transactions. And I don't think it's unusual that someone would give a new partner information about herself. I can also understand why she told the fraudster her bank account number - he would've needed this to send money to her account.

As I don't think Mrs R took out the £25,000 loan, I don't think it's fair that she should have to repay it. I appreciate RateSetter thinks that's unfair. It says it followed its underwriting processes, so it's not fair that it (and ultimately its investors) should lose out. But I'm sure it's aware of the risks of its underwriting processes.

RateSetter thinks a decision on these lines is inconsistent with other cases this service has considered. But I disagree. In the complaints it has drawn to my attention the circumstances were different. In those cases the relevant consumers transferred their own money to a third party after they'd been scammed. But that's not the case here. In this case Mrs R transferred money that had been taken out in her name fraudulently. I'm satisfied that when she transferred the money she didn't realise that the money was "hers" or that she'd been the victim of identity theft.

my final decision

My final decision is that Retail Money Market Ltd (trading as RateSetter) should:

1. Cancel the loan and refund all repayments Mrs R has made.
2. Add interest to each refunded payment, calculated at the rate of 8% per year simple from the date each payment was made to the date it pays Mrs R.
3. Remove all information about the loan from Mrs R's credit file.

If it deducts tax from the interest part of the award, it should provide Mrs R with a tax deduction certificate so she can reclaim the tax from the tax authorities, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 17 November 2016.

Laura Forster
ombudsman