

complaint

Mr M complains that Retail Money Market Limited, trading as RateSetter, ("RMM"), didn't carry out adequate affordability checks before he received a loan he couldn't afford to repay. Mr M also complains that RMM wrongly pursued him for debt after it had been told he was a vulnerable consumer. The complaint is brought to this service on Mr M's behalf by a family member ("Mr M2"). But for ease I shall refer below to all actions being taken by Mr M, unless otherwise stated.

background

RMM arranged for Mr M to enter into a fixed sum loan agreement for a loan of £10,000 in April 2016 provided by peer to peer lenders. RMM acted as agent for the peer to peer lenders. The loan terms and conditions said that RMM advanced the amount of credit, collected the repayments and conducted enforcement action on the lenders' behalf. The loan amount was repayable over four years by 48 monthly payments of £254.83.

Mr M2 said that the loan had been lent irresponsibly to a vulnerable person and he failed to understand how the loan could have been justified if proper credit and affordability checks had been executed and validated. Mr M2 said that RMM should have asked for proof of Mr M's income.

Mr M had said in his application form that he was earning a net monthly income of £7,715. But Mr M2 said that at that time Mr M wasn't working. Mr M had been suffering from manic periods following an operation and had since been diagnosed with bipolar disorder, depression and generalised anxiety disorder. Mr M2 sent a medical report to RMM in June 2018 which said that Mr M was unable to work. The medical report also said that the debts Mr M currently had were contributing further to his depression and thus having a detrimental effect on his health. Mr M stopped making loan repayments in mid-2018. Mr M2 wanted the loan to be frozen and ideally written off.

Mr M2 is also unhappy at RMM's delay in dealing with the freezing of Mr M's account following RMM being informed of his mental health issues and vulnerability and RMM's unsatisfactory administration of his account after being sent a letter of authority appointing Mr M2 to deal with his financial affairs in March 2018.

RMM said that it had completed two credit reference agency checks as well as income and affordability checks. Its underwriting team had said that all minimum lending requirements were met. RMM said that the loan was affordable on the basis of Mr M's declared income that he'd put on his application. The correct process had been followed and there was no error on its part.

our investigator's view

The investigator firstly considered whether the loan had been lent irresponsibly. He didn't recommend that this aspect of the complaint should be upheld. He didn't think RMM's credit checks contained anything which would call for further investigation.

The investigator also noted that if a lender was told that a customer was vulnerable, it must suspend the debt. He said that RMM was told in July 2018 that Mr M was a vulnerable customer, but it carried on pursuing the debt.

The investigator also said that on 15 November 2018, RMM had agreed to freeze the interest on the debt and suspend the collection process indefinitely. RMM had also agreed to wipe off any interest which had been added to the account since July 2018. The investigator thought this was fair. But he noted that Mr M2 wasn't happy with this because Mr M2 felt that RMM should completely cancel the debt. The investigator said that he wasn't able to ask RMM to do that because he felt that it had done enough due diligence for the amount being lent and Mr M had had the benefit of the money. So it wouldn't be fair for the debt to be written off.

Mr M2 disagreed. He responded to say that it wasn't satisfactory for RMM to accept Mr M's declared income. Mr M2 accepted that Mr M had received the loan, but due to Mr M's condition he had no recollection of where this money had gone. Mr M2 said that Mr M had managed to pay back at least half of the loan, but this had been done by borrowing more money from other sources.

Mr M2 also said that Mr M's condition had caused him to have manic episodes and suicidal tendencies, and no compassion had been shown by RMM. For several months, Mr M2 had been hounded by RMM despite it being aware of Mr M's condition. This added considerably to the stress Mr M2's wife and Mr M2 had been suffering. Mr M2 also said that there was no letter of confirmation from RMM that the debt would not be sold on and there was no guarantee the debt would be suspended indefinitely. He said that in the circumstances it wouldn't be unreasonable for the debt to be written off.

The investigator responded to say that by agreeing to freeze the loan indefinitely, RMM had made appropriate accommodations. So he wouldn't be asking RMM to do anything further. He'd asked RMM to send Mr M2 written confirmation that Mr M's debt would be suspended indefinitely and wouldn't be sold on.

Mr M2 responded to say that he'd received an email from RMM confirming the loan would be suspended indefinitely and wouldn't be sold on. But Mr M2 also noted that RMM had said that this would be reviewed annually as the loan was outstanding.

Mr M2 said that he thought that this contradicted RMM's intention to suspend the outstanding amount indefinitely and it also went to show that RMM didn't understand the implications of someone having bipolar disorder. Mr M2 said that he would have thought that the loan should be written off when taking all the circumstances into consideration.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr M and to RMM on 2 April 2019. I summarise my findings:

I said that there were two aspects to this complaint and that I would deal with each of these separately.

affordability assessment

I noted that RMM needed to make sure Mr M could afford the loan repayments. There weren't a set list of checks that RMM had to carry out. But its checks needed to be proportionate to things such as the amount of each repayment, the length of the agreement and any borrowing history. I noted that RMM had said that it had asked about Mr M's

income, made two credit checks and checked affordability. Mr M had declared his net monthly income to be £7,715.

I had seen the report from Mr M's doctor and noted Mr M's health difficulties. But I couldn't see anything to show that RMM was aware of these when Mr M applied for the loan.

I had seen a summary of RMM's credit checks. I'd asked the investigator to ask RMM for its more detailed credit check results, but the information it provided to us in response was the same as the summaries I'd already seen.

The two credit check summaries showed similar results, although I'd noted that a credit score of 604 was given by one of the credit checks. There was no credit score given by the other. The reason given for the credit score of 604 on the credit check was the high credit limit utilisation on Mr M's accounts. I'd noted that this differed from the assessment in RMM's complaint response letter dated 12 September 2018 which said Mr M had a high credit score due to a previous strong repayments history. I didn't think that its complaint response reflected what the credit check said. And I thought that the relatively low credit score for someone with Mr M's stated salary and the negative comment accompanying it might have given RMM some concerns.

I'd also noted that Mr M had eight active other credit accounts. Of note, I could see that the credit balance on one of Mr M's credit cards had been over its credit limit for six out of the previous nine months. The balance on another credit card had increased by around £2,100 and £2,456 respectively in each of the previous two months with a balance outstanding of around £8,456. I'd also noted that Mr M's current account was also overdrawn.

I thought that all these recent indications of Mr M's credit behaviour together with the relatively low credit score and accompanying adverse comments might have concerned RMM. Overall and taken together, I didn't think they would normally be expected of someone earning the salary level stated by Mr M and I thought they might have suggested that Mr M's finances were under pressure. I'd also noted that Mr M's regular financial commitments (an unsecured loan and a mortgage for which the total monthly payments were £869) wouldn't appear to have been the cause of such financial pressure. But I did note that Mr M's mortgage repayment had appeared to have increased by around £400 when he'd taken out a new mortgage around six months earlier.

So considering the information revealed by RMM's credit check and that the repayments on this loan were to be spread over 48 months, I thought it would have been proportionate for RMM to have gathered a more comprehensive view of Mr M's financial circumstances and sought some independent verification of these.

Although I didn't think the checks RMM did before the loan were sufficient, I'd said that in itself didn't mean that this aspect of Mr M's complaint about this loan should succeed. I also needed to see whether what I considered to be proportionate checks would have shown RMM that Mr M couldn't sustainably afford the loan.

To find out more about this, I'd reviewed Mr M's bank statements for the month before he took the loan. Had RMM done so, it would have seen that he had no income and was approaching his £3,000 overdraft limit at the time of the application. So, I thought if RMM had done what I considered to be proportionate checks, it would have seen the problems with Mr M's financial situation. And so I didn't think it would have agreed the loan.

I'd asked the investigator to ask Mr M2 if Mr M would be able to work in the next 12 months and for Mr M's current health situation. He said:

"Unable to give a clear indication as to whether [Mr M] will be able to obtain any income in the next 12 months. He is self-employed and due to his bipolar had very high expectations but in reality, sadly these do not come to fruition. We have had to fund most of his debts but are now unable to continue, so the future at present is not looking very bright."

"He [Mr M] knows we are trying to deal with [RMM] and when aware of any contact becomes very depressed and had in the past contemplated suicide."

Mr M2 said that Mr M was now being cared for at a hospital for mental health.

I'd noted that Mr M had paid over half the amount due under the loan. I could see that RMM had now frozen Mr M's account and that it said that it would check his situation annually. But in view of Mr M's medical report, the circumstances outlined by Mr M2 and the potential impact on Mr M of any contact from RMM, I thought that it would be reasonable for RMM to arrange for the outstanding balance on the loan to be written off and to arrange for the removal of any adverse entries on Mr M's credit file regarding the loan.

pursuing the debt

I could see that Mr M2 had sent RMM an email on 29 March 2018 with a third party authority and requesting further information about the loan. RMM didn't respond to the email and on 10 April 2018 Mr M2 spoke to RMM. RMM said that it hadn't received the email and couldn't discuss the account. It had then found the email on that date but didn't respond to Mr M2's questions raised in that email and considered the matter settled.

RMM upheld Mr M2's complaint about how the authorisation had been added to Mr M's account and how this was communicated on 14 June 2018. I'd noted that RMM had apologised for this.

I had seen Mr M's medical report dated May 2018 which said he had recently been diagnosed. I'd also noted that the report said that Mr M was unable to work at that time and that the debts were having a detrimental effect on his health. I could see that Mr M2 had sent the medical report to RMM on 9 June 2018 and asked for a copy of RMM's duty of care policy.

RMM told Mr M2 on 21 June 2018 that it didn't have a duty of care policy. As the request for the duty of care policy was requested in connection with Mr M's mental health issues, I thought RMM should have realised that Mr M2's request was in relation to these and that it could have told Mr M2 about its Vulnerable Customer Guidance ("VCG"), but it failed to do so.

As RMM would have been aware from 9 June 2018 of Mr M's mental health issues, it would have known that Mr M was a vulnerable customer and that it should have acted in line with its own guidance for such customers. But I'd seen RMM's contact notes and could see that whilst a note had been made in April 2018 that Mr M had a physical illness, it didn't appear to have been amended to reflect the fact that he had a mental health illness. So I thought that RMM's staff might not have dealt with the case in line with the VCG because of this.

I'd seen RMM's VCG and noted the following provisions:

“Where we are made aware of a particular vulnerability,the objective of any action taken will be to mitigate any potential detriment or harm that might be caused to the customer were we not to provide an appropriate level of care. “

“As well as taking appropriate action to support vulnerable customers, we also needed to make sure that other members of staff who deal with the customer are aware of the situation.”

“There will be instances where customers in arrears lack the capacity to make decisions about the management of their debt or engage in the debt recovery process. Where we are made aware (or are notified) that this is the case, we must immediately suspend the pursuit or recovery of a debt.”

I'd noted that Mr M2 had sent a third party authority to RMM on 29 March 2018. He'd also said that Mr M was suffering problems following a brain tumour operation. Despite this, I could see from RMM's contact notes that it continued to contact Mr M until 20 April 2018, with around four emails being sent to Mr M and three text messages being sent to Mr M. I could see that these might have caused substantial distress to Mr M.

I didn't think that RMM had acted in line with its own VCG and noted that RMM had pursued the debt after it was made aware of Mr M's mental health issues and lack of disposable income. I'd noted that after Mr M's medical report was sent to RMM in June 2018, RMM told Mr M2 that it could only freeze interest and set up a repayment plan once it received income and expenditure details and bank statements. Mr M2 had sent RMM Mr M's income and expenditure form and bank statements in July 2018. So it was aware of Mr M's current financial difficulties. Nevertheless, I could see on RMM's contact notes that RMM was texting and emailing Mr M2 weekly, sometimes daily, to pursue the debt. In October 2018 Mr M2 was told that the account was at risk of being sent to a debt collection agency.

I have considered whether to make an award to reflect the emotional and practical impact RMM's actions have had. I asked the investigator to ask Mr M2 whether Mr M had been caused stress by RMM's actions. Mr M2 said:

“I know [Mr M] also had received communications from [RMM] but I am reluctant to enquire at this stage, unless vital, for fear of any adverse reactions. “

In view of Mr M's medical report, I have no reason to doubt what Mr M2 had told us. I thought it likely that Mr M would have been caused unnecessary distress by RMM's continued communications to Mr M after being provided with a third party authority on 29 March 2018. So I thought it would be appropriate for RMM to pay Mr M £300 compensation for distress and anxiety as a result of its actions.

I'd also noted that RMM had caused considerable trouble and upset to Mr M2 and his wife by failing to deal with his communications promptly, by pursuing the debt and by failing to respond to his questions posed in several communications in July, August and September 2018. But as Mr M2 and his wife weren't RMM's customers, I said that we couldn't award them compensation for the poor way RMM had dealt with them. We could only tell a business to pay compensation for trouble and upset experienced by its customer.

Subject to any further representations by Mr M or RMM my provisional decision was that I intended to uphold this complaint in part. I intended to order RMM to:

1. Arrange to write off the outstanding balance on Mr M's loan;
2. Pay £300 compensation to Mr M; and
3. Arrange to remove any adverse information about the loan from Mr M's credit file.

Mr M2 on behalf of Mr M responded to my provisional decision to say that he accepted my provisional decision. RMM hasn't provided a response to my provisional decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Given that Mr M has accepted my provisional decision and RMM has given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require RMM to pay Mr M some compensation as set out below.

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Retail Money Market Limited, trading as RateSetter, to:

1. Arrange to write off the outstanding balance on Mr M's loan;
2. Pay £300 compensation to Mr M; and
3. Arrange to remove any adverse information about the loan from Mr M's credit file.

RMM must pay the compensation within 28 days of the date on which we tell it Mr M accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple.

If RMM considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision 8 June 2019.

Roslyn Rawson
ombudsman