

complaint

Mrs S complains that Retail Money Market Ltd wrongly allowed her then husband to take out a loan in her name, but has sought payment from her. Retail Money Market Ltd trades as RateSetter.

background

In June 2018 a £3,500 loan was taken out in Mrs S's name. The loan proceeds were paid into the joint account she held with her husband. It was transferred out of that account on the same day. Two transfers were made, one to Mr S's account and one to a gambling firm.

A few months later Mrs S says she found out that her husband had taken out a number of loans in her name, which he'd used to fund his gambling habit. They included the RateSetter loan. She's explained that her husband controlled their finances, including the joint account into which her salary was paid.

Mrs S contacted RateSetter to say that she hadn't taken out the loan and that she shouldn't therefore be liable to repay it.

RateSetter didn't agree to Mrs S's request. It said, in summary, that Mrs S should have monitored the joint account; had she done so, she would have been aware of her husband's actions. It also said that it regarded the matter as a civil dispute - which I take to mean that it should be resolved directly between Mr and Mrs S.

One of our investigators considered what had happened. He took the view that Mrs S hadn't taken out the loan and that RateSetter couldn't therefore hold her liable for it. RateSetter didn't agree and asked that an ombudsman review the complaint.

In the meantime, the investigator sought further information from Mrs S about her separation and divorce from Mr S, which she provided.

I considered the case and, because I was minded to reach a different conclusion from that reached by the investigator, I issued a provisional decision.

I agreed that it was unlikely Mrs S applied for the loan or knew about it when it was taken out. The information needed to take out the loan would have been readily available to Mr S, and there were indications that he had used some, but not all, of her details to do so.

I didn't agree with RateSetter that Mrs S was under a duty to monitor the activity on the joint account or that she should have identified the loan payment sooner. Customers should alert their banks to fraudulent activity as soon as they become aware of it, but I was satisfied Mrs S hadn't identified any issue until it was too late to prevent her losses.

I also took the view that Mrs S hadn't had any benefit from the loan taken out in her name. Whilst it had been paid into a joint account (to which she of course had access), Mr S had removed the money before she found out about it. The effect of paying the money into the joint account was that Mr S had been able to access it, even though the loan was in the name of Mrs S.

As I've mentioned, Mr and Mrs S were subsequently divorced, and Mrs S provided some details of the financial arrangements she reached with Mr S. They were concluded after she became aware of the RateSetter loan and after it had declined her claim. The agreement

reached between Mr and Mrs S indicated that Mr S's gambling activities - including taking out loans in Mrs S's name – had been taken into account. It appeared that Mr S had agreed, for example, not to claim any share in the matrimonial home.

RateSetter suggested that this was a civil matter - which I took to mean that it should be resolved between Mr and Mrs S. The divorce settlement indicated to me however that it had been resolved between them, at least in the sense that Mr S's action in removing the £3,500 loan funds from the joint account was in their minds when they agreed how to divide their assets and liabilities.

For that reason, I didn't consider that it would be fair to require RateSetter to write off the loan in full. It had been taken into account in the divorce settlement, and it appeared that Mrs S had received more in that settlement than she might otherwise have done. I also took the view, however, that Mrs S hadn't agreed to the loan terms – for example, the interest rate or payment arrangements – and so it wouldn't be fair for RateSetter to hold her to those terms.

I recommended, provisionally, that RateSetter limit its claim for repayment from Mrs S to the capital amount of the loan, £3,500. I also recommended a further payment of £200 in recognition of the distress caused to Mrs S.

In response to my provisional decision Mrs S pointed out that the loan had appeared on her credit file. All other loan companies had accepted what her ex-husband had done and had agreed to correct her credit files.

She said too that her credit score had prevented her from being able to move her mortgage to a different lender and that as a result her monthly mortgage payments were around £115 more than would otherwise have been the case.

RateSetter was broadly in agreement with my provisional findings. In response to Mrs S's further comments, it said it would remove information from her credit file once they had agreed to a repayment plan for the outstanding money. It didn't accept however that her mortgage repayments had been higher as a result of the loan.

I've therefore considered the case again in the light of these further comments.

my findings

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

I haven't changed my main finding from that set out in my provisional decision. Whilst I don't believe Mrs S took out the loan, agreed to anyone else taking it out or had any benefit from it, I think she has – as far as possible – resolved that issue with Mr S. Against that, however, she didn't agree to its terms, and so RateSetter should not seek to recover from her any more than the capital amount outstanding. For the avoidance of any doubt, credit should be given for any payments that were made shortly after the loan was taken out. RateSetter should not apply any interest or charges to the amount it transferred to Mr and Mrs S's account.

I agree with Mrs S that RateSetter should remove any credit reference information registered as a result of the loan. That should not be dependent upon any payment arrangement being reached; but nor should it prevent the recording of information at a later date if payment arrangements are not met.

I'm not persuaded that, but for the loan, Mrs S would have been able to switch her mortgage to a different provider at lower cost. She hasn't provided any documents evidencing that and says she has nothing more she can provide.

my final decision

My final decision is that, in order to resolve Mrs S's complaint, Retail Money Market Ltd should:

- limit the amount it is seeking from Mrs S to the outstanding capital balance of the loan, taking into account any payments already made;
- tell Mrs S in writing the amount outstanding;
- agree not to charge interest or add any fees or charges to the amount due; and
- pay Mrs S £200 in recognition of the distress she's been put to.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 20 August 2020.

Michael Ingram
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