

The complaint

Mr J complains that Metro Bank PLC trading as RateSetter failed to act responsibly when deciding whether to lend to him, leading to increased debt and financial difficulty.

What happened

In June and October 2018 RateSetter approved two loan applications from Mr J. Loan A, for £4,000, was taken out over two years with a monthly repayment of just over £200. This loan was used to consolidate Mr J's overdraft and credit card balances. Loan B was approved six months later. It combined Loan 1's balance and additional borrowing Mr J required to pay for his wedding, for a total of £5,888. Loan B was again set up over a two-year term with an increased monthly payment of a little over £300.

Mr J subsequently complained to RateSetter (and us) about its decision to approve Loans A and B, as well as a later loan that is the subject of a separate complaint to us. He felt RateSetter hadn't properly considered his financial position when approving the loans, and that he was only able to service the payments by borrowing money elsewhere. RateSetter says it undertook an affordability assessment including a review of Mr J's bank statements, his income and expenditure, and his existing credit commitments and payment history. It felt it had done enough to ensure the borrowing was affordable.

Our investigator was satisfied with the steps RateSetter took in respect of Loan A. It had demonstrated it made reasonable and proportionate enquiries that showed he could afford the loan payments. Further, she considered that the consolidation of Mr J's existing borrowing indicated the borrowing was sustainable.

But on Loan B, the investigator took a different view. She noted that in the relatively short time between taking out Loan A and applying for Loan B, Mr J had run up debt on his overdraft and credit card again. He'd also taken out another credit card. The investigator felt this ought to have prompted more enquiry from RateSetter over the way in which Mr J was managing his finances.

She thought that if RateSetter had made further enquiries, it would have established he was spending more than his income each month. That would have suggested the Loan B borrowing proposal was unsustainable and would have had an adverse impact on Mr J's situation. To address this, the investigator recommended that RateSetter refund to Mr J any amounts he'd paid over and above the capital sum lent on Loan B; effectively a refund of interest and charges.

Mr J accepted the investigator's recommendation. But RateSetter didn't. It maintained that its assessment showed Loan B was affordable as its own calculations had indicated Mr J would have had surplus income after taking into account the additional loan commitment. It asked for this review.

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 noted the basis of RateSetter's calculations and the method it uses for assessing disposable income. I don't think it's necessary to set out that methodology here; it's information that's likely to be commercially sensitive and in any event, affordability isn't the only strand of a creditworthiness assessment. Guidance applicable at the material time in the Consumer Credit Sourcebook (CONC) made this clear:

"CONC 5.3.1G

(1) In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit."

CONC goes on to say that the creditworthiness assessment *"...should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences."*

I'm aware, of course, that many lenders use methods of assessment similar to RateSetter. There's nothing inherently wrong with this. But given the additional information relevant to Mr J's application for Loan B – such as its proximity to him taking out Loan A, the fact he'd gone overdrawn again after consolidating the original debt – I'm not persuaded it was appropriate for RateSetter to rely solely on its standard assessment. The individual circumstances of this case ought to have suggested to RateSetter that a proportionate assessment would involve more enquiry about how Mr J was managing his finances in order to ensure the lending was sustainable.

Had RateSetter done this it would have found that Mr J was not in control of his financial situation. I think it's safe to say that the way he was dealing with his income and expenditure was unsustainable. He was borrowing money in order to meet repayments for his existing debt, so a reasonable creditworthiness assessment ought to have concluded that further borrowing would make an already difficult situation worse.

I appreciate that Mr J would also be familiar with his situation. It can't have escaped his attention that he was spending more money each month than he had coming in. So while I think if RateSetter had made a reasonable and proportionate creditworthiness assessment it wouldn't have lent to Mr J, I don't think it would be unfair for Mr J to pay back what he borrowed. Rather, I consider our investigator's proposal that has the effect that RateSetter recovers only the capital sum it lent and not interest on that amount represents a fair way to recognise the difficulties its decision caused to Mr J.

I note that Loan B was ultimately repaid (I understand possibly by the subsequent loan Mr J took out with Ratesetter that is the subject of a separate complaint). With this in mind, the redress calculation for RateSetter should be relatively straightforward, in that it would be the interest element of each payment Mr J made on Loan B from the date he took out the loan until the point at which it was settled. RateSetter should also pay interest on each refund calculated at 8% simple per year, based on the date Mr J made each payment¹.

RateSetter should also refund Mr J any arrears fees or other charges incurred on Loan B, as well as removing any late/missed payment information it may have recorded on his credit file.

¹ *HM Revenue & Customs requires RateSetter to take off tax from this interest. RateSetter must give Mr J a certificate showing how much tax it's taken off if Mr J asks for one.

Mr J should be aware that RateSetter may look to set-off any refunds against arrears on any other borrowing arrangement he has with it. It is entitled in law to do so, though RateSetter should let Mr J know if that's what it intends to do.

My final decision

My final decision is that I uphold this complaint. To settle it, I require Metro Bank PLC trading as RateSetter to take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 9 August 2023.

Niall Taylor
Ombudsman