

## **The complaint**

Mrs M complains that Retail Money Market Ltd trading as RateSetter ("RateSetter"), treated her unfairly when she was experiencing financial difficulties.

## **What happened**

Mrs M borrowed money under three separate peer-to-peer agreements ("P2P agreements"), with a third party lender I will call "R".

The first P2P agreement was taken out in 2017, the monthly repayments for this agreement were approximately £30 per month. The second P2P agreement was taken out in 2018, the monthly repayments for this were approximately £86 per month. The third and final P2P agreement was taken out in 2019, and the monthly payments were approximately £205 per month.

RateSetter was not a lender in relation to these P2P agreements. Rather it operated an electronic system in relation to lending which Mrs M used to find and select a lender on each of the three occasions. In other words, RateSetter provided an electronic platform to facilitate lending between Mrs M and R under three separate P2P agreements. RateSetter administers the account on behalf of R. R is not a party to this complaint.

I set out below Mrs M's version of events and RateSetter's version of those same events.

### *Mrs M's version of events*

Mrs M began to experience money troubles in April 2020 while she was on leave from her work. As a result, she was unable to keep up with her monthly repayments, Mrs M contacted RateSetter to tell it this. She also told it she'd be returning to work in October 2020.

In response, RateSetter suspended her repayments between May 2020 and November 2020.

However, in November 2020 Mrs M was made redundant. At this point, when asked to do so by RateSetter, Mrs M sent it information about her income and expenditure. This information showed that her expenditure exceeded her income. Therefore she was experiencing financial difficulties.

Nonetheless Mrs M tried her best to honour her debts. But due to her financial difficulties Mrs M was only able to offer to make repayments of £1 per month towards each P2P agreement. Mrs M wanted RateSetter to set up a repayment plan as other lenders had done for her.

Mrs M thought she would be in a position to resume her repayments very shortly. This is because she was looking for a job and also because she was taking her employer to court and thought she was likely to win the case. She told RateSetter all of this.

However, RateSetter would not accept the payments, as a repayment plan. Instead it defaulted all of the P2P agreement accounts in December 2020. And it asked the credit reference agencies to mark these defaults on Mrs M's credit file.

Mrs M queried this at the time and made several attempts to persuade RateSetter to accept the £1 per month per P2P agreement repayments as a repayment plan before it defaulted her accounts. But it would not accept what she said about this.

By April 2021 Mrs M had found a new job and she contacted RateSetter to let it know this. Thereafter from June 2021 she began making her contractual repayments for all of her P2P agreements. Ultimately, in early 2022, Mrs M paid off all of her P2P agreements in full.

Mrs M thinks RateSetter acted unfairly in December 2020 by defaulting the P2P agreement accounts and she wants it now to ask the credit reference agencies to remove the defaults from her credit file.

#### *RateSetter's version of events*

RateSetter believed Mrs M's April 2020 money troubles were due to Covid 19. RateSetter pointed out that its regulator introduced guidance in 2020 for financial businesses whose customers were experiencing financial difficulties due to the exceptional circumstances caused by Covid 19. There were several iterations of this guidance, but I'll call it collectively "the guidance". However, according to RateSetter, Mrs M's agreements were exempt from the guidance.

That said, RateSetter was obliged to show due consideration and forbearance in these circumstances. It did this by suspending the repayments for the P2P agreements, from May to November 2020, (although interest continued to accrue).

In addition, it did not ask the credit reference agencies to mark any negative information about this suspension of payments on Mrs M's credit file.

Further, it would have looked to work with Mrs M to find a workable solution to help her pay off the arrears, and it had told her this throughout May to November 2020.

November 2020 though was a crunch point. Mrs M's financial situation meant that her options were very limited. She could not recommence her contractual repayments never mind pay off the arrears. Moreover, RateSetter had already suspended repayments for seven months and Mrs M therefore had run up substantial arrears (although RateSetter had not asked the credit reference agencies to register these arrears). And it did not look like Mrs M's financial situation was going to improve within the short term (six months).

RateSetter was not prepared to set up a repayment plan with the £1 per month per P2P agreement payments because that was not in Mrs M's best interests. It pointed out that the payments were token payments, therefore not suitable for a repayment plan.

Moreover, if it had accepted the token payments and registered a repayment plan this information would have stayed on Mrs M's credit file for more than six years. Whereas a default would only appear on Mrs M's credit file for six years. Therefore, in its opinion defaulting the accounts was the better option.

RateSetter's position is also that it went through all the relevant options with Mrs M in detail before it defaulted the accounts. After this full exploration of Mrs M's options Mrs M agreed with RateSetter that it should default the accounts.

On this basis RateSetter did not accept that it had behaved inappropriately. It follows it did not uphold Mrs M's complaint and therefore it declined to ask the credit reference agencies to remove the defaults it had asked them to register on Mrs M's credit file.

#### *What happened once the complaint was with us*

Dissatisfied, Mrs M complained to our service.

One of our investigators looked into Mrs M's complaint. Our investigator recommended that RateSetter ask the credit reference agencies to remove the defaults from Mrs M's accounts and that it pay her £150 for distress and inconvenience.

Mrs M accepted this recommendation, RateSetter did not. In rejecting our investigator's recommendation RateSetter repeated its previous stance.

RateSetter asked that an ombudsman review Mrs M's complaint.

I took a fresh look at Mrs M's complaint. Having considered the available evidence, I was not minded to uphold the complaint, but I thought it was fair to let the parties see my provisional findings and make further submissions (if they wanted to) before I made my final decision. Therefore, I issued a provisional decision and I've set out below what I decided provisionally - and why. This forms part of my final decision.

***"What I've provisionally 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.*

*First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.*

*Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.*

*I don't think either party is saying RateSetter did anything wrong prior to registering the defaults. And even if I am mistaken about this, I think taking into account RateSetter's obligations to behave with due consideration and forbearance in a situation like this, RateSetter acted correctly. In that it helped Mrs M to keep financially afloat for seven months while she experienced short term temporary financial difficulties due to the coronavirus.*

*I also note that as RateSetter has already said, Mrs M's agreements being P2P agreements were not covered by the guidance.*

*Therefore, I think the crux of this complaint is did RateSetter behave fairly when it registered the defaults on the accounts?*

*I'm required to decide what, if anything, RateSetter should do to resolve this complaint. In doing that, I must decide what I think is fair and reasonable. In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time. I consider that, amongst other things, the "Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies" published by the Information Commissioner's Office is relevant guidance here. I'll call this the "ICO guidance".*

*Mrs M suggests RateSetter made a mistake because it did not agree to register her offers of reduced payments as repayment agreements. I disagree, I say this because in this context the £1 per month per P2P agreement payments Mrs M offered were token payments. Even in relation to the P2P agreement with the £30 per month repayments.*

*This is what the ICO guidance says about what can be reported if a customer makes an offer of reduced payments which are token payments:*

***"Unacceptable or Token payments***

*If your lender does not agree a reduced or revised payment with you because the amount you offer to the lender is not acceptable, for example, a very low or token payment, the account will not be reported as an arrangement or a DMP negotiated by a third party.*

*Any payments you make will be reflected in the current balance, arrears will continue to accrue, and a default may be recorded."*

*Therefore bearing the ICO guidance in mind RateSetter was not obliged to accept these repayments as a repayment plan and it was entitled to register the defaults.*

*Moreover, I think it is important to note that given the size of the outstanding balances, the repayment plans would have lasted for years, in fact for decades for the largest balance. That would have been totally inappropriate. This is what it seems RateSetter is getting at when it says that the repayment plans would have lasted more than six years.*

*RateSetter's internal notes, which I have no reason to doubt on this point, show that RateSetter did discuss the defaults with Mrs M before they applied them. Moreover, I am also satisfied that Mrs M had no way of avoiding the defaults as she did not have the means to pay anything more than the £1 per month per P2P agreement that she offered and paid.*

*I recognise that Mrs M tells us that her other lenders did set up repayment plans. But just because other lenders took this approach does not mean RateSetter acted incorrectly. It was not obliged to do as they did.*

*It is only with the benefit of hindsight, that anyone can now see that Mrs M's finances would recover sufficiently for her to restart her contractual repayments mid-2021 and that she'd be able to pay off the P2P agreements in full the following year. RateSetter is not expected to act as it would have done if it had the benefit of hindsight.*

*I don't underestimate the impact that these defaults are having now on Mrs M's financial situation. Especially given she is trying to sort out her financial affairs in the midst of a cost of living squeeze.*

*I also appreciate she may find it unfair that defaults were registered for debts that she paid off in full, albeit only once the defaults were registered. But for the reasons I've set out above I've no proper basis for saying that RateSetter has to do anything further. It follows that I don't intend uphold Mrs M's complaint.*

### ***My provisional decision***

*My provisional decision is that I don't intend to uphold Mrs M's complaint."*

Both Mrs M and RateSetter responded to my provisional decision. Below, I summarise their respective responses.

Mrs M sent in a detailed response. Mrs M told us about something I'd got wrong in my provisional decision, she told us she first began to experience money troubles because she was placed at risk of redundancy and thereafter her employer did not behave in accordance with its obligations as an employer. Subsequently Mrs M took legal action against her employer for this behaviour, and she won her case.

When Mrs M contacted RateSetter she told it all about her employment predicament, on several occasions. As the situation with her employer evolved she kept RateSetter up-to-date. Specifically, she explained that she had good reason to believe that she had a strong case against her employer, that she intended to take legal action and it was likely she'd win. Moreover, she also let it know she was job-hunting, and she was confident that she'd get a new role quickly. As a result she indicates that RateSetter was aware or ought to have been from November 2020 onwards that there was a very good chance that she'd be in a position to resume her full contractual repayments shortly.

Mrs M explains that nonetheless and understandably she was stressed in December 2020. Add to this that RateSetter did not explain clearly or accurately what it was going to do with the default and token repayments. It follows, in Mrs M's opinion, that it cannot fairly be said that she accepted RateSetter's offer to default the accounts and treat her repayments as token repayments.

Moreover, if RateSetter had been clear about its intentions she most likely could have avoided the default because:

*"If RateSetter had properly provided advice, I may have been in a position to seek the support of family to increase the repayment level."*

In any event, Mrs M does not agree that the defaults were discussed with her before they were applied. She thinks that RateSetter's internal records which purport to show this are inaccurate.

Mrs M indicates that given that RateSetter agreed not to treat her missed payments between May and November 2020 as arrears she was not in three months arrears in December 2020. Therefore the accounts should not have been defaulted.

In any event RateSetter had not acted in accordance with its regulatory obligations. If it had then it would have accepted the token repayments and set up a repayment plan.

Mrs M underlined again that other lenders had set up repayment plans for her using her token payments. Therefore when assessing if RateSetter had acted reasonably it was necessary to take account of the fact that it had behaved differently from its peers.

Mrs M pointed out my provisional decision had not discussed at all why the view of our investigator was flawed.

Mrs M said at first that RateSetter had registered more than one default per account. But Mrs M then let us know, very quickly afterwards, that this was not the case. Rather, the credit report she'd been sent and relied on had a "*display issue*". That is why it looked like more than one default had been registered. Mrs M sent us information from the credit reference agency that backed up what she said.

RateSetter did not indicate whether it accepted my provisional decision or not. We sent it Mrs M's response to my provisional decision, but it sent only one comment in response. It merely told us it had only registered one default per account.

### **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 thank both Mrs M and RateSetter for their responses to my provisional decision. It has been particularly helpful that Mrs M took the time to set out her views on my provisional decision, so that I have been able to gain a fuller understanding of her stance and concerns. I've also reviewed the file again and revisited my provisional decision. And having done all this I've not been persuaded by Mrs M's response to my provisional decision.

I think it is fair to say that Mrs M is in a very tough and regrettable position. Through no fault of her own she experienced financial difficulties. The knock-on impact of this was that for a while she did not make her contractual repayments. But, as soon as she could, she paid off these debts in full. Now however, she is still dealing with the consequences of that period in her life, and she is unable to get on with her financial life as she would like because of it. That said, whilst I recognise this, I am unable to fairly say that RateSetter has done anything wrong. It follows I'm not upholding her complaint. I'll explain why below.

I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances

I apologise for saying that Mrs M's money troubles were caused by the impact of the Coronavirus pandemic. It had appeared from the information I had that this was the underlying cause. I thank Mrs M for the correction.

The difficulty for Mrs M is that what is not disputed is that by November 2020 her repayments had been suspended for seven months. Further, in general after such a suspension of payments she would have been expected to recommence her repayments and repay the missed payments too (given her financial difficulties were not down to Covid 19). But in December 2020 she was not, on the face of it, in a position to recommence her repayments or catch-up on the repayments she'd missed. And nothing Mrs M has said before or in reply to my provisional decision makes me think that was not the situation on balance.

Mrs M tells us that RateSetter did not explain the situation properly, so much so that she did not understand that it intended to default her accounts and refuse her request to set up repayment plans. But the information I've seen does not persuade me that was the case. As far as I can see there were several clear discussions about what action RateSetter was going to take. And I find that if Mrs M did not understand RateSetter's intentions it is not fair or reasonable to say that is RateSetter's fault. Neither do I think that RateSetter's records did not record matters accurately.

Even if I accepted, which I don't, that RateSetter did not explain its intentions clearly enough what would have happened differently? Mrs M suggests she could have avoided the default by seeking the support of family.. If Mrs M is talking about asking family to gift her money that is just a hypothetical possibility it seems. Nothing I've seen shows it is more likely than not that if Mrs M had asked her family they would have been willing and able to gift her the money. If Mrs M is talking about borrowing money from family. This gets her no further. Because borrowing to pay off borrowing is not an option that RateSetter could fairly have accepted.

Mrs M indicates that RateSetter "jumped the gun" in that it should have accepted that she was likely to win her court case and get a new job in the short-term. But the fact of the matter was this, in December 2020 Mrs M had merely the possibility of winning her court case and no new job to go to. I don't think in those circumstances RateSetter acted unfairly by not believing in Mrs M prospects as much as she did.

Mrs M also indicates that RateSetter should have acted as its peers did. But the actions of those peers is not the yardstick I have to measure RateSetter against. Rather in considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time. And when I do that RateSetter acted fairly. I say this because in December 2020 Mrs M had not made repayments in seven months, had no immediate means of recommencing her repayments or making up the missed payments. RateSetter had to act with due consideration and forbearance, but I don't agree that means that it had to agree to set up a repayment plan with token repayments and thereby guarantee that until Mrs M's situation changed she'd go on racking up arrears. It is also significant that at this point Mrs M had negative income.

Mrs M is correct to say that given RateSetter had agreed to treat the missed repayments between May 2020 and November 2020 not as arrears she was not three months in arrears in December 2020. But where does this get her? If RateSetter had waited until February or March 2021 she would have even longer to wait for those defaults to "drop off" her credit file.

For all of these reasons I find that RateSetter acted appropriately.

For completeness I'll mention that when an ombudsman reviews a complaint they must take a fresh look at it. it is not my role to analyse our investigator's view and say why I don't agree with it.

For all of these reasons I've not been persuaded by Mrs M's response to my provisional decision. It follows I've reached the same conclusions for the same reasons as I did in my provisional decision.

**My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 5 October 2023.

Joyce Gordon  
**Ombudsman**