

The complaint

Mr O is unhappy that Retail Money Market Ltd trading as RateSetter has made a CIFAS loading against him for evasion of payment on a loan.

What happened

Mr O took out a loan with RateSetter in July 2019 for £14,000. Mr O has told us he took the loan to help him start buying and selling cars. He made his first repayment in August 2019.

Mr O didn't make a repayment in September 2019 and made no contact with the lender. And so RateSetter phoned Mr O to discuss the missing payment. Mr O asked for a callback that evening. But when RateSetter called back Mr O didn't answer.

RateSetter then repeatedly tried to contact Mr O, almost daily, over the following three months. Letters, emails, and text messages were sent, and voicemails were left. But RateSetter never heard from Mr O and he didn't get back to the business. No further payments were made.

RateSetter notified Mr O of an intention to visit him to discuss the loan. It followed through with that visit and was informed that Mr O no longer resided at the address.

RateSetter defaulted the account and passed the debt to a collection agency in December 2019. In January 2020 it loaded a CIFAS marker against Mr O under the category of evasion of payment.

Mr O contacted RateSetter for the first time in June 2020. He asked about setting up a payment plan and RateSetter said he'd have to discuss with the debt collection agency. It discussed the address issue with Mr O, and he said he did still live at the same address. Mr O asked for the CIFAS loading to be removed as it was having a significant impact on him. But RateSetter refused to do so.

Mr O made a complaint about what had happened, including the loading of the CIFAS marker. RateSetter said it wouldn't remove the CIFAS loading and maintained its position regarding the debt collection agency. And so Mr O brought his complaint to this service.

Mr O told us that he believes the CIFAS loading is unfair. He says he fell into financial difficulties after obtaining the loan and so was unable to repay it. He said he was suffering a great deal of stress at the time, and couldn't face such matters, which is why he didn't discuss repayment or the arrears with RateSetter.

Mr O told us that RateSetter's actions had led to his business account with a high-street bank being closed.

One of our investigator's considered Mr O's complaint but found that RateSetter had acted fairly and reasonably in the circumstances. He could see that RateSetter had made in excess of 50 attempts to contact Mr O about the arrears and had received no response from him. He noted that, on the occasions RateSetter had spoken to Mr O, he had said he was

too busy to discuss the situation and that he'd never informed it of his financial difficulties.

Mr O didn't agree and so the complaint has been passed to me for a final decision.

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.

Having done so, I'm not upholding it. I'll explain why.

The question I have to answer here is whether RateSetter has fairly applied the CIFAS loading against Mr O. And so I must consider whether there's sufficient evidence to support that Mr O was evading payment, given that's what the loading was for. Having considered all of the evidence and information available, I believe RateSetter has acted fairly and reasonably in the circumstances.

The evidence clearly shows a great many attempts by RateSetter to contact Mr O, and by various means. There's no real dispute about just how frequently RateSetter was trying to get in touch with Mr O.

What's also clear is that Mr O made no attempts to speak with RateSetter. He was given numerous channels to do so, including speaking on the phone, writing a letter, or sending an email. But none of these opportunities were taken, for many months. Instead, Mr O actively avoided contact on at least two occasions when he declined to speak with RateSetter on the phone. And that was despite, at least in the second call, the seriousness of the status of the account being highlighted to him.

I appreciate Mr O has said he was having a difficult time when all of this was happening and that he struggled to discuss his finances. But I don't find it was fair and reasonable for him to have given no indication of what his situation was and to ignore all contact from RateSetter.

Mr O has told us about a limited company for which he is a director. He's told us about this to help show that he was in a difficult financial position, given that he'd fallen into arrears on a mortgage. Whilst I can see that this might help demonstrate he was in financial difficulty I don't believe it means that his lack of contact with RateSetter can then be reasonably explained to the extent that it was unfair of it to make the CIFAS loading.

I've also noted that the company Mr O is the director of had pending action for compulsory strike-off at the time RateSetter was trying to discuss the loan with him. That was in fact true of two companies of which Mr O was the sole director. Those records are freely available on Companies House.

But what those records also show is that Mr O was able to provide suitable explanation and evidence to avoid strike-off action for both companies. To me, this demonstrates a willingness and ability to engage in important matters involving finances. And it follows that it wouldn't be unfair to say that Mr O ought to have similarly engaged with RateSetter.

In addition to these points I am somewhat concerned at the fact that payments are missed so soon after a large sum of money is borrowed. Mr O said he was borrowing the money to help him start buying and selling cars to make an income. But that doesn't seem to have led to him being in a position to maintain repayments at all. If Mr O was already in financial difficulty at the point he took the loan that it would seem fair and reasonable to say that he was already aware that he wouldn't be able to make repayments. Which would further support the action taken by RateSetter.

My final decision

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 20 November 2021.

Ben Murray
Ombudsman