

The complaint

Mr M complains that Metro Bank Plc trading as Ratesetter unfairly terminated and defaulted his loan account after he'd had a short term payment deferral.

.What happened

In September 2018, Mr M took out a £3,000 loan with Ratesetter payable over 60 months at £69.81 per month. Mr M said he maintained his monthly contractual repayments. But In August 2021, Mr M said his income was reduced as he was put on furlough because of the pandemic. He told Ratesetter about his financial difficulties and it was agreed that his direct debit would be placed on hold for three months. In early December 2021 Mr M contacted Ratesetter and explained he was still struggling financially. Ratesetter sent Mr M a Standard Statement of Income form to complete and for him to consider Open Banking to help during his current financial situation. But Mr M said when he saw his direct debit had been reactivated, he didn't complete the forms or look to Open Banking as he was again paying his monthly contractual repayments.

Mr M said he was surprised after returning from a Christmas break to find Ratesetter had terminated his loan agreement and that his account had been placed with debt collectors. He said his credit file showed he'd defaulted on the loan agreement and that this would be recorded for six years. Mr M complained to Ratesetter.

Ratesetter said they'd called Mr M as agreed in late November 2021 but didn't get a response. As his account was three months in arrears, they issued a default notice shortly after. Ratesetter said that Mr M spoke to them in early December 2021 and it was agreed that he'd complete the Statement of Income, so that they could assess his financial circumstances. They said they put any termination action on hold for two weeks to give Mr M the chance to return the forms. But when the forms weren't returned, they terminated his account.

Mr M wasn't happy with Ratesetter's response and referred his complaint to us.

Our investigator said that Mr M was aware his account was in arrears. And as he hadn't returned the income and expenditure form Ratesetter hadn't acted unfairly or unreasonably in following their process and terminating his agreement.

Mr M didn't agree and asked for an ombudsman to decide.

I issued a provisional decision in November 2022 that said:

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 currently minded to uphold this complaint.

In 2021 Mr M was experiencing financial difficulties caused by the pandemic. Up to this point

he had made his monthly contractual repayments on time. The FCA produced guidance for businesses in assisting consumers through these difficult times. And this included payment deferrals, but the FCA said the guidance would only cover payment deferral up to July 2021, and Mr M only made Ratesetter aware of his financial difficulties in August 2021.

Where a COVID payment deferral isn't possible, but Ratesetter are aware of financial difficulties, I would expect them to consider offering alternative support and help. So I've considered the relevant regulatory guidance set out in the FCA's Consumer Credit Sourcebook ("CONC"). CONC 7.3 sets out the considerations a lender should take into account when dealing with a customer in arrears. And this includes the need to treat the customer fairly, to allow a period of forbearance where appropriate, and to allow the customer reasonable time and opportunity to repay the debt.

I'm pleased to see that in August 2021 when Mr M made Ratesetter aware of his difficulties they agreed to stop taking his monthly repayments made by direct debit for three months. This covered the months of September, October and November 2021. And Ratesetter told Mr M they'd call him on 20 November 2021 to discuss his situation going forward.

Ratesetter called Mr M on 22 November 2021 but he didn't answer and there wasn't an option to leave a voicemail message. I would have expected Ratesetter to have tried to speak to Mr M again, or to contact him by another channel, for example email to say they'd called. But they didn't, in fact they issued a default notice to Mr M the next day.

Mr M said he didn't receive the default notice. But I can see he emailed Ratesetter just prior to his December 2021 payment falling due. And he asked for further help as he was still struggling financially. He also explained he'd a new job starting in January 2022 and that he would be able to maintain his monthly loan repayments from then on. I can see Ratesetter put a hold on any further action and looked to Mr M to complete an income and expenditure form. And gave him an option of Open Banking, with the intention to establish Mr M's financial situation and whether there was any further help they could give. Ratesetter gave Mr M two weeks to take this action. But I can't see that Mr M was told the consequences of not returning the form or taking up the Open Banking option.

Mr M didn't take up either option but began to repay his monthly contractual loan repayments again from December 2021. I can't see that Ratesetter acknowledged this payment but I can see that after the two week deadline had passed they defaulted and terminated Mr M's loan account.

Guidance set out by the Information Commissioner's Office (ICO) says that a creditor may record a default if an account is in arrears for three months. And "If a customer fails to return to contractual payments after an 'arrangement to pay' has expired, then the lender can file a default immediately". But while Mr M was three months in arrears, he'd returned to making his contractual payments and this wasn't acknowledged by Ratesetter.

The ICO guidance also says:

"If you fall into arrears on your account, or you do not keep to the revised terms of an arrangement, a default may be recorded to show that the relationship has broken down."

I think the crux of Mr M's complaint is whether the relationship between Ratesetter and himself had broken down. And I don't think it had. The payment deferral was a temporary arrangement and I agree should have been noted on Mr M's credit file as such, while arrears would accrue a default wouldn't be recorded. When the temporary arrangement ended and contractual payments were again being made, I would have expected Ratesetter to acknowledge this and look to consider capitalisation, re-scheduling or re-aging of the loan

agreement. But I don't think they considered that Mr M was again making his contractual repayments when they defaulted his account.

RateSetter gave Mr M two weeks to return the income and expenditure forms, and as he hadn't, they defaulted and terminated his loan account. I can understand Mr M's frustration as I'm persuaded his understanding was that he was now making his contractual payments and he'd be engaging with Ratesetter with a view to developing a way of clearing the outstanding arrears. I can't see that Ratesetter made Mr M aware of what the consequences would be if he didn't complete the income and expenditure forms. And In situations like this I think Mr M should have clearly been told the implications if he didn't complete the forms. CONC does suggest a reasonable time period for when a repayment plan is being considered, as I think was the case here, as thirty days. But Mr M was only given two weeks by Ratesetter to consider the options.

So, I don't think Ratesetter has treated Mr M in a fair way. They didn't acknowledge Mr M's December repayment. And I don't think they acted reasonably to allow him time to discuss a way of clearing the arrears on his account after the temporary arrangement had ended. I can't say whether or not Mr M would have kept up with his monthly commitments or agreed a repayment plan for clearing the arrears. But I don't think Ratesetter gave Mr M ample time to test this before taking action that could affect his financial situation for six years.

And I think this has caused Mr M distress and inconvenience. Up until the impacts of the pandemic Mr M had maintained his loan agreement. And he was now concerned about his account being given to debt collectors, and the financial implications of having a default recorded on his credit file for six years. So, I also intend to ask Ratesetter to compensate Mr M for this by paying him £150.

Responses to my provisional decision

Both parties accepted my provisional decision.

Ratesetter commented that while Mr M had recommenced his contractual payment, they would have still needed a plan to be in place for managing the account. And Mr M had failed to return the Standard Statement of Income, if he had this could have prevented the termination of his account. But they accept that RateSetter should have made further contact with Mr M to understand his financial circumstances and to look to set up a plan, before issuing the termination notice.

My final decision

I uphold this complaint. And ask Metro Bank Plc trading as Ratesetter to:

- take back Mr M's loan agreement from the debt collectors;
- remove any charges that may have been added to his account with regard to his account being transferred to debt collectors;
- remove the default from Mr M's credit file;
- discuss an affordable repayment option with Mr M for the three months arrears built up during the payment deferral period; and
- pay £150 to Mr M for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or

reject my decision before 8 December 2022.

Anne Scarr
Ombudsman