

The complaint

Mr H is complaining about the way Metro Bank PLC trading as RateSetter reported his personal loan to the credit reference agencies.

What happened

In April 2019, RateSetter approved Mr H's application for a £10,000 loan. In January 2023, he contacted RateSetter to let them know he was having financial difficulties, and they allowed him a month's breathing space. They didn't hear from him during that time, and tried unsuccessfully to contact him, so they sent him a termination letter on 29 March 2023 and defaulted his account.

Mr H contacted RateSetter on 3 April 2023 to explain the situation. He agreed to pay off his arrears by making his normal monthly payments and paid off the balance in full in September 2023. But he later noticed a default on his credit file, which said the account had defaulted on 29 March 2023. The default was showing as having been satisfied on the same day. So Mr H thought it was an error. He complained to RateSetter, saying they shouldn't have registered his account as defaulted and it had severely impacted his credit score.

RateSetter replied to Mr H's complaint. They apologised that their representative didn't tell Mr H about the default during the phone call on 3 April 2023. But they didn't think they'd made any error in issuing the default – they said Mr H had built up arrears of £715 before the breathing space period had started.

Mr H remained unhappy and brought his complaint to our service where one of our investigators looked into it. Our investigator said RateSetter hadn't acted unfairly or unreasonably in registering the default, but he said RateSetter should have done so earlier. And our investigator said he thought some of the correspondence wasn't clear and had contributed to Mr H not realising the account would be defaulted. To put things right, our investigator said, RateSetter should amend the default date to October 2022, and pay Mr H £150 in compensation for mis-managing his expectations.

RateSetter said they could look to backdate the default – but only to the point at which Mr H's loan had fallen into three instalments of arrears – which would be January 2023. They said they understood our investigator's view and proposed compensation around the lack of clarity and were happy to proceed with that element of our investigator's recommendation.

Mr H was unhappy though – he said that £150 was not adequate compensation for the impact the default had had on his ability to get credit for a mortgage or a car. He added that he had tried to contact RateSetter a number of times before they defaulted the account but each time he was waiting for 10-15 minutes without getting through and so hung up. He said he didn't feel it was reasonable to have to wait for this long and questioned what would be considered a reasonable amount of time to have to wait on the phone.

As neither party accepted our investigator's recommendation, the matter was passed to me for a decision. I issued a provisional decision on 12 September 2024, explaining that I

thought £150 was enough compensation, and that I didn't think RateSetter needed to change the date of the default. I said:

"Mr H missed his instalments for July 2022, December 2022 and January 2023. So by the end of January, he was three months in arrears. RateSetter's terms and conditions for Mr H's loan said that arrears of two or more instalments could be treated as an event of default, and explained that if this happened, they would serve a default notice and subsequently terminate the agreement if the customer didn't correct the default. And the Information Commissioner's Office (ICO) guidance suggests that defaults should normally be applied once a customer is three months in arrears, and by the time they are six months in arrears.

So I'm minded to say RateSetter acted fairly in issuing him a default notice on 18 January 2023 – this was in line with the terms and conditions of Mr H's loan and in line with the ICO guidance.

The default notice said that Mr H needed to remedy the breach before 3 February 2023 or the account would be terminated. In response, Mr H contacted RateSetter at the end of January 2023. He told them he was struggling financially, and they allowed him 30 days' breathing space. RateSetter's contact notes show they emailed details of the breathing space and then emailed Mr H a form to fill in about his finances.

The contact notes don't show any further communication between the parties until 16 March 2023 – when RateSetter attempted to call Mr H, but unsuccessfully.

Mr H then emailed RateSetter on 22 March 2023 to offer to pay 50% of his normal monthly instalment. RateSetter replied the next day to ask him to call them so that they could provide immediate assistance. They didn't agree to the 50% arrangement and Mr H didn't make any payments. There was then no further contact noted until 3 April 2023 - after the default was registered. Mr H made arrangements to pay the arrears at this point, and thought that had resolved the matter. It appears he believed that he had 17 days from the date of the termination letter to set up an arrangement. I can understand why this might have been the case – RateSetter's email about the breathing space wasn't tailored to take into account the fact that Mr H's account was already three months in arrears and he had already been sent a Default Notice:

"If you or any representative have failed to contact RateSetter by the end of the 30 day period collections activity may resume. [Delete if not appropriate]: Should your account reach three-months of arrears, when the account has been removed from the hold, a Default Notice will be generated. If an arrangement is setup within 17 days of the letter, the Default will not be registered to your credit file and the account will not be terminated."

RateSetter had already told Mr H that he was three months in arrears, and issued him a default notice. And in this email, they said that if Mr H hadn't contacted them by the end of the 30-day period, collections activity would resume. So, I'm inclined to say they had given Mr H enough notice that they were going to default his account. But that was then confused by the statement of what would happen if the account were to reach three months of arrears.

I'm inclined to say RateSetter's email should have been clearer and more tailored to Mr H's situation. But I can't say that would have changed the outcome – I haven't seen enough evidence to suggest that he'd have acted differently if the email had been clearer.

I do think it might have impacted Mr H's expectations though, and so it's fair RateSetter pay him some compensation to address any upset caused by their misleading email. I'm satisfied the £150 our investigator suggested is fair and reasonable.

Mr H says he tried to call RateSetter repeatedly but couldn't get through and didn't have time to wait for more than 10 – 15 minutes to do so. On that basis, he says, his account defaulted because of RateSetter's failure to answer the phone. While I don't doubt what Mr H is saying, I'm not inclined to hold RateSetter responsible here. I don't think fifteen minutes is an unreasonable amount of time to wait. And I think RateSetter had made it clear how important it was that Mr H contact them.

Finally, I need to consider when the default should have been applied – as our investigator suggested Mr H's account should have been defaulted in October 2022 when it had been in arrears for three months. I don't think the default should have been applied in October 2022. At this stage Mr H had only missed one payment, and had since made two payments on time. So it would have gone against the terms of the agreement to register a default at that point.

RateSetter have suggested they could look to backdate the default to January 2023, when Mr H had fallen into three instalments of arrears. But Mr H responded to the default notice and RateSetter allowed him breathing space. So it wouldn't have been reasonable for RateSetter to issue a default notice during that time.

RateSetter appear to have extended the 30-day breathing space without telling Mr H. And then they delayed further before issuing the default. But this appears to have been to give Mr H further opportunities to resolve the situation – they tried to call him on 16 March and asked him to contact them on 23 March. I'm inclined to say it was fair and reasonable for RateSetter to give Mr H these opportunities before issuing the default – and therefore I don't think RateSetter should change the date of the default.”

RateSetter accepted my provisional decision, and Mr H didn't provide any further comments or evidence.

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 received no further comments or evidence from either party, so my final decision is unchanged from my provisional decision. RateSetter need to pay Mr H £150 to compensate him for any upset caused by their misleading email. But they don't need to take any other actions – I'm satisfied the default date shown on Mr H's credit file is a fair reflection of the situation.

My final decision

As I've set out above, I'm upholding Mr H's complaint. Metro Bank PLC trading as RateSetter need to pay Mr H £150 to settle the matter.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 October 2024.

Clare King

Ombudsman