

## **The complaint**

Mr M complains Metro Bank PLC trading as RateSetter recorded a gone away marker against his credit file for his loan account when they shouldn't have.

## **What happened**

In May 2023 Mr M applied for a credit card with another provider and was turned down. He was told it was because RateSetter had recorded a marker on his credit file showing him as gone away. Mr M called RateSetter and was told it was because letters were being returned from his postal address. Mr M said this is false as he's receiving letters, and RateSetter could have emailed him. Mr M said he wanted compensation for the error, and he wanted to see a copy of the envelope that'd been returned.

RateSetter said they'd issued an annual statement to Mr M in January 2022 and sent it by post as they were required to do. They said they noted a gone away marker had been added on 27 April 2022 and this is usually because post has been returned. They noted Mr M was still living at the same address, and they updated their systems. But they didn't think they'd done anything wrong, so they didn't uphold his complaint.

Unhappy with this, Mr M asked us to look into things. One of our Investigators did so but couldn't see RateSetter had done anything wrong.

Mr M disagreed, in summary he said:

- As long as the marker is on his credit file, the expectation is that records should be kept – this varies between two to seven years
- RateSetter must be able to produce the evidence and they've provided nothing to show he returned the letter
- No legislation has been mentioned to explain what time financial businesses are required to keep records for – and as far as he's aware if there is a dispute then records need to be kept for at least seven years. He's received all his statements from RateSetter and there has been no issue until now
- They provided him with the 2023 annual statement, not the 2022 statement

As Mr M didn't accept our Investigators outcome, the complaint's been passed to me to decide.

## **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.

The regulator the Financial Conduct Authority (FCA) sets out the rules for our service to follow. These rules are set out in the Dispute Resolution: Complaints (DISP) Handbook.

DISP 3.6.1 says:

*The Ombudsman will determine a complaint by reference to what is, in his opinion, fair and reasonable in all the circumstances of the case.*

And DISP 3.6.4 says:

*In considering what is fair and reasonable in all the circumstances of the case, the Ombudsman will take into account:*

*(1) relevant:*

*(a) law and regulations;*

*(b) regulators' rules, guidance and standards;*

*(c) codes of practice; and*

*(2) (where appropriate) what he considers to have been good industry practice at the relevant time.*

I've set out the scope of how I'm required to decide cases, because Mr M has talked about the law setting out retention periods for evidence. Mr M though hasn't named a specific law, and I'm unaware of any law which would require RateSetter to have kept a copy of the envelope that was returned to them. Because of that, I'll decide this case based on what I consider to be fair and reasonable.

The envelope that was returned is at the crux of this complaint and is the key piece of evidence that'd determine whether RateSetter have or haven't made an error.

RateSetter have said they use contractors to send out any required annual statements that have to be sent by post. And they've told us their contractors aren't required to keep the envelope as evidence.

In the circumstances I can absolutely see why Mr M would want a copy of the envelope – on the basis he never moved. It would clearly have been helpful to have provided this, but given it'd been more than a year, I don't find it particularly unusual they didn't still hold a copy of this.

So, in the absence of that I'll need to decide things based on what I think is more likely than not, using the fair and reasonable remit I'm required to.

Although RateSetter may have sent Mr M a copy of the 2023 annual statement, the note they recorded was on 27 April 2022. So, it stands to reason it's the 2022 annual statement sent in January which they say was returned.

I've noted Mr M has said he'd already had a copy of this. But I also can't ignore that RateSetter have added a gone away marker to his account. I can't rule out they've made an error, because Mr M says he received the letter, but I think it's more likely than not they haven't. As a general rule, I think it'd be unlikely they'd have added something to his records and credit file without any reason to go into his file to do so.

In addition, Mr M has mentioned sometimes his post is delivered to another property in error – and often people may return things as gone away by mistake.

So, based on all the evidence I've seen, I think it's more likely than not they've added this marker correctly.

I have though thought about if they'd made an error, whether I'd ask them to do anything more than they have, and I don't think I would. RateSetter said sorry and arranged for the entry to be removed. In the circumstances, I'm satisfied that'd have been a fair resolution to any error anyway.

Finally, I've noted Mr M has said RateSetter needed to keep records for any disputes. But I've already found they more likely than not didn't make any error in recording the gone away marker. In addition, this wasn't in dispute until over a year later – when he first contacted them in May 2023. Up until that point, I think RateSetter thought they'd done the right thing.

Overall, I've not found any reason to say RateSetter have acted unfairly.

### **My final decision**

For the reasons I've explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 2 January 2024.

Jon Pearce  
**Ombudsman**