

The complaint

Mr J complains that Ferratum UK Ltd lent to him irresponsibly.

Mr J also complains that Ferratum ought to have asked about his mental health when he applied for the loan in 2017.

Mr J says that Ferratum has been uncooperative and threatening legal proceedings rather than responding to him and helping him since the loan was issued.

What happened

Mr J took one loan with Ferratum on 22 August 2017. It was for £400 to be repaid over three monthly instalments: two payments of £202.90 and one final payment £167.29. The original agreement would have meant that Mr J repaid just over £573. Ferratum's record shows that Mr J told it he was employed full time and he earned around £2,001 each month.

After Mr J complained to Ferratum it sent him its final response email dated 22 October 2020. The debt was over three years old by that stage. Ferratum explained that no payments had been received. The loan had reached the regulator's interest cap which meant that the debt had become £800. The account had been transferred to its collection agency.

Mr J referred his complaint to this Service and explained *'It is my belief that ferratum [sic] did not carry out enough checks when providing the loan, only a credit check was carried out, no questions regarding current circumstances including my mental health at the time not enough security checks,So finally it is my belief I should never have been given the loan and if more questions and security checks were made I wouldn't not of been accepted, they did not ask for me which is so important if I had mental health issues they did not ask if I already had payday loans and did not ask what my financial situation was at the time...'*

Mr J has added that *'...tried constantly to agree deals with them to try and pay off this debt, instead of offering help they have doubled the debt and threatened court action....and have been unresponsive in trying to help rather choosing to threaten court action even when I'm not working.'*

Mr J does not want compensation for the anxiety and distress he says this has caused but he does *'I would like my complaint upheld and the loan and account closed with the money owed cleared.'*

One of our adjudicators looked at the complaint and thought that Ferratum did not need to do anything to put things right about the loan approval as she thought Ferratum had carried out appropriate and proportionate checks before lending. She said that in her view, and on the details and information she had, she did not see how Ferratum would have known about Mr J's mental health issues or his other concerns, unless he had chosen to volunteer that information to Ferratum at the time he applied for the loan in 2017. She considered his request that the loan be written off but she did not think that was fair as Mr J had benefited from the capital sum offered and so he ought to repay it.

So, in her view the complaint was not upheld and Mr J disagreed. He asked that it be reviewed by an ombudsman.

I asked both parties to send to me additional information before I came to any decision. Mr J has sent us two pages of bank statements covering some of August 2017.

Ferratum has added to its explanations about Mr J's non payment and sent to me copies of text messages sent to Mr J between August and October 2017 to invite him to contact it and to ask for payment. Ferratum has said that its collection agent is now pursuing Mr J for the debt through the Courts and it does not agree that the debt should be written off. It adds that it is sorry that Mr J *'...has confirmed he has a gambling addiction and mental health issues but we could not have been reasonably expected to know this.'*

Ferratum said that no contact was made by Mr J to it and if he had then it would have been able to agree a settlement and an affordable repayment plan.

The complaint remained unresolved and was 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.

We have set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Irresponsible lending

Ferratum needed to take reasonable steps to ensure that it did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to be satisfied Mr J could repay the loans in a sustainable manner. These checks could include several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

In the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate. But certain factors might point to the fact that Ferratum should fairly and reasonably have done more to establish that any lending was sustainable for the consumer.

These factors include:

- having a low income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a level of income);
- having many loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable. But this is not applicable in Mr J's situation as he took one loan. There's no 'pattern' when its one loan.

Ferratum was required to establish whether Mr J could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

The loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the Consumer Credit Sourcebook ("CONC") defines 'sustainable' as being the ability to repay without undue difficulties. The customer should be able to make repayments on time, while meeting other reasonable commitments, and without having to borrow to meet the repayments.

And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower will not be able to make their repayments sustainably if they need to borrow further in order to do that.

I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr J's complaint.

Mr J's main concerns expressed to our adjudicator after she had sent him her opinion on the complaint, was that he did not think that she had investigated it enough. And he thinks that Ferratum ought to have done more checks including looking into his financial situation, his mental health and check out the other loans he had and why he had them. Mr J accepts that Ferratum carried out a credit check. He says that was not enough.

This sounds like Mr J expected that a full financial review to have been carried out when he was a new customer to Ferratum. And this, in my view, would have been disproportionate. I would not have expected Ferratum, acting in line with the regulator's requirements about responsible lending, to carry out such an in-depth review of Mr J's finances for a first loan for £400.

Ferratum has told us it took information from Mr J about his employment and salary. It carried out a credit check and was satisfied with what that showed it. The loan was for a relatively modest sum and for a person on £2,001 (declared salary) a month to repay two lots of £202 and one repayment of £167 Ferratum decided to lend to Mr J as it did not look unaffordable.

Neither party has sent to us details of any credit reports or credit search results. Ferratum has not kept the record from 2017 which is a little surprising as 2017 is not that long ago. However, I have had to accept its explanation. Mr J has been asked for it twice before and not sent anything relating to his credit history to us.

Consequently, I am not able to see what it is that Ferratum discovered in August 2017 when it approved the loan. What I do have is some details from Mr J by looking at his bank statements. I would *not* have expected Ferratum to review his bank statements for a first loan and so I am using them only because it is all I have been sent in order to see what his other debts may have been and what it was Ferratum may have discovered from its own credit report.

The two pages of bank statements covering a few days in August 2017 do demonstrate that Mr J had

- An income of almost £2,200 a month (Mr J has said that he was off sick at the time but in any event he has told us that he would have received full salary)
- He had a guarantor loan for which he was repaying around £158 a month. These usually registered on credit reports as an 'unsecured loan'
- He had a type of overdraft facility on his account with a lender which offered this type of credit facility. The amount borrowed for those types of credit facilities usually were up to the borrower so long as the amount requested was within the facility credit limit. These usually registered on credit searches as a 'credit card' type facility.
- He had a debt and there's a payment of £20

Just using this information, I do not think that this leads me to think that Ferratum's credit search would have revealed anything to cause it concern. And Mr J had a relatively good income to be able to repay the other credit alongside the loan he was asking Ferratum for.

As I have explained, I have reviewed the two pages of Mr J's bank statements as this is all I have from both parties to try to identify what other debt Mr J says that he had at the time. But I would not have expected Mr J's bank statements to have been looked at by Ferratum for the loan 1 application. And so, it would not have seen that Mr J spent money on betting and gaming transactions. Unless Mr J had volunteered it, Ferratum would not have known, and I would not have expected it to know at that stage of the lending relationship, or at all.

I do not uphold Mr J's complaint for irresponsible lending.

Mental health issues

As for Mr J's mental health issues at the time – I am sorry to hear of it. Mr J has said that he has recovered from the issues and that is good to hear.

Mr J has given me an idea as to what the mental health issues were but he has not sent to us any evidence of the issues. For something so serious, simply assertions of his mental state in 2017 in emails to us is not enough. Plus, there's nothing on the evidence provided from Ferratum for 2017 to demonstrate to me that Ferratum knew, or had reason to believe, that Mr J had such issues.

For completeness, if Mr J's assertion was that he felt he had no mental capacity then the approach for lenders to take is regulated in the FCA CONC chapter 2.10. I am familiar with this set of regulations.

CONC 2.10.4 Guidance states that the starting point is this:

'A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity.'

And the FCA Guide lists some behavioural indicators which, if the lender observes any, may lead to the firm having reasonable grounds to suspect that a customer may have some form of 'mental capacity limitation'. These are in CONC 2.10.8 and are a guide list.

Mr J has not provided us or Ferratum with any incidents or factual matters which he thinks would have led it to thinking, or given reasonable grounds for it to suspect, that he had mental health issues.

And even if Ferratum did have any grounds, CONC 2.10.7 guidance states '*...this does not necessarily mean that the customer does not have the mental capacity to make an informed borrowing decision.*'

So, unless Ferratum as a lender had reasonable cause to believe that Mr J had mental health issues it would not have needed to enquire further. And there's no evidence of that. And Ferratum's starting point is set out above in paragraph CONC 2.10.4.

Pursuit of the debt

Mr J refers several times to the fact that Ferratum had bullied him and had not agreed to any of his offers to come to a deal on the debt and was now threatening Court proceedings. Ferratum has explained that it received no contact from Mr J despite trying and I've seen texts from it to Mr J in 2017 which makes it clear that Mr J did not respond to any of them. Ferratum's collection agent has been dealing with the debt.

I have no evidence from Mr J about these alleged bullying tactics or the other matters. Ferratum says that no payments have been paid and no contact has been made. If Mr J had been in touch with the agent, again, I've no evidence of any such contact. The agent would have been following instructions to obtain payment on a debt which is now four years old. So, I do not think that I can come to any conclusion that Mr J has been treated unfairly by Ferratum or its agent as I have no evidence from Mr J. And the evidence I do have from Ferratum shows me that the attempts to make contact appear to have been ignored by Mr J. And the correspondence with a Ferratum representative on October 2020, after Mr J had received the FRL, shows that she said she would inform its collection agent to place the debt account on hold while the complaint was at this Service. That seems fair and reasonable.

My decision is that I do not uphold Mr J's complaint. In the circumstances I have no need to say anything further on Mr J's request for the debt to be written off as such an outcome is not contemplated where the complaint about irresponsible lending has not been upheld. And is rarely acceded to in any event even where a complaint is upheld for irresponsible lending.

My final decision

My final decision is that I do not uphold Mr J's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 14 October 2021.

Rachael Williams
Ombudsman