

## complaint

Mr D has complained about 16 payday and 2 instalment loans he's taken out with Ferratum UK Ltd (Ferratum) from October 2014 until November 2016. Mr D says the loans trapped him in a debt spiral and were also unaffordable, so he thinks Ferratum shouldn't have them to him.

## background

Based on information given to us by Ferratum, a summary of Mr D's borrowing history is as follows;

loan number	loan amount	received date	repayment date
1	£150.00	13/10/2014	27/10/2014
2	£250.00	27/10/2014	26/11/2014
3	£200.00	01/12/2014	22/12/2014
4	£250.00	22/12/2014	26/01/2015
5	£300.00	26/01/2015	26/02/2015
6	£300.00	26/02/2015	26/03/2015
7	£300.00	02/04/2015	14/04/2015
8	£150.00	20/04/2015	26/05/2015
9	£300.00	29/07/2015	26/08/2015
10	£300.00	28/08/2015	25/09/2015
11	£300.00	09/10/2015	26/10/2015
12	£300.00	27/10/2015	09/11/2015
13	£300.00	13/11/2015	26/11/2015
14	£200.00	05/01/2016	02/03/2016
15	£170.00	15/07/2016	26/07/2016
16	£250.00	30/08/2016	30/08/2016
17*	£300.00	14/09/2016	25/11/2016
18*	£500.00	28/11/2016	balance has been waived

Loans 17 and 18 were instalment loans that were due to be repaid over a 3 month period.

Ferratum told Mr D in its final response, that it hadn't made an error in giving him the loans. But, as a gesture of goodwill it offered to waive the outstanding balance on the final loan (£525.47) and offered to pay Mr D an additional £300. Mr D didn't accept this offer and brought his complaint to us.

One of our adjudicator's reviewed Mr D's complaint and she thought Ferratum's checks went far enough before agreeing to the first loan. So she didn't think it was wrong of Ferratum to have given Mr D this loan.

However, she felt that for all remaining loans Ferratum's checks needed to go further. For loans 2 and 3 she felt Ferratum needed to have gathered some information about his living costs and regular financial commitments. However, she thought that had Ferratum gathered this information it still would've given Mr D these loans.

For loan 4, the adjudicator thought that Ferratum should've gathered further information about any other short term credit commitments and for all the remaining loans Ferratum should've had a full understanding of Mr D's financial position. And having reviewed Mr D's bank statements, the adjudicator thought that proportionate checks would've shown Ferratum that he couldn't afford the loan repayments because he had a number of other short term credit commitments and was spending significant sums on gambling sites.

Ferratum didn't agree with the adjudicator's assessment, in response it made a number of points including;

- there was no regulatory requirement for Ferratum to have reviewed Mr D's bank statements,
- Ferratum relied on the information it gathered from the credit reference agencies along with its own internal credit checks and
- Ferratum was entitled to rely on the information available to it, and therefore it couldn't have known about Mr D's gambling.

However, Ferratum has since told us that following the adjudicator's assessment it took the decision to waive the outstanding balance of the final loan.

### **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. And having carefully thought about everything I've been given, I'm partly upholding Mr D's complaint and I've explained my reasons below.

Ferratum had to gather enough information to be able to make an informed decision as to whether it was going to lend. The guidance and rules don't set out what checks must be done before lending is approved. But Ferratum needed to take reasonable steps to make sure the loan was affordable for Mr D. There was no set list of checks that Ferratum needed to carry out, but these checks needed to be proportionate to a number of things such as the size of the loan and when the loan was due to be repaid.

But even if the checks Ferratum carried out weren't proportionate, that alone doesn't mean Mr D's complaint should be upheld. I say this because, it's possible, that had further checks been carried out by Ferratum, these would've shown Mr D was able to repay his loans. So Ferratum wouldn't have been wrong to lend him the money.

Ferratum says that before it lent to Mr D it took details of his income and it has provided a record of what Mr D told it. Ferratum also says that it carried out credit checks with a credit reference agency before each loan— and again, Ferratum has been able to provide the results of these checks.

Ferratum says that it didn't see anything in what it saw that would've prompted it to carry out further checks. So based on the information it gathered about Mr D, it was reasonable to lend to him. But I've thought about what Ferratum says and Mr D's circumstances at the time each loan was approved. And having done so, I don't think the checks Ferratum carried out were proportionate for some of the borrowing.

*loan 1*

For Mr D's first loan Ferratum took details of his income and carried out a credit check – which didn't give Ferratum any cause for concern about the information Mr D had provided. Overall I think these checks were proportionate given the amount Mr D was borrowing and what Ferratum knew about Mr D at the time. So, I think the checks carried out by Ferratum went far enough so I don't think it was wrong of Ferratum to have given Mr D this loan.

#### *loans 2 – 3*

Mr D's second loan was taken out on the same day as his first loan was repaid. And his second loan was also for a larger amount. And while Mr D's third loan was for a smaller amount, it was again taken out only a few days after the second loan was repaid.

So while I appreciate Ferratum carried out a credit check and Mr D's income hadn't changed, I still think Ferratum's checks needed to go further considering the amount Mr D was expected to repay as well as his borrowing history. I think by now it would've been proportionate for Ferratum to have gathered some further information from Mr D about his living costs and his regular financial commitments.

Because, Ferratum didn't gather this information, I've used Mr D's bank statements in order to try to understand what these costs were at the time. Having reviewed Mr D's bank statements, I think had Ferratum carried out proportionate checks, it would've likely seen that Mr D had enough disposable income to be able to afford the repayments he was committed to making. So I don't think it was wrong of Ferratum to have given Mr D these loans.

#### *loan 4*

By now, I think Ferratum should've had some concerns about Mr D's financial position. Mr D's declared income had stayed the same, but this loan was again taken out on the same day as his third loan had been repaid. This was also Mr D's fourth loan in a little over two months, and his second loan in December 2012.

This should've given Ferratum cause for concern about the information Mr D was providing it because I think Mr D's borrowing behaviour could've suggested he was becoming dependant on this type of borrowing. Ferratum needed to ask Mr D some further questions about his financial position in order to have an up to date picture of his finances. In addition to asking about his living costs, it would've been proportionate for Ferratum to have made some enquires to find out what, if any outstanding short term credit commitments Mr D may have had at the time.

I've again reviewed Mr D's bank statement and at the time this loan was approved, and having done so, I can see that Mr D owed other short term lenders over £800. It therefore follows, that had Ferratum carried out proportionate checks before agreeing to this loan, it would've likely seen that Mr D didn't have enough disposable income to be able to afford this loan once his declared living costs and regular financial commitments were considered. And as a responsible lender Ferratum shouldn't have given Mr D this loan.

#### *loan 5*

Like Mr D's fourth loan – this loan was taken out on the same day that his previous loan had been fully repaid. And Mr D's borrowing had increased again to £300. And this was now the fourth month in a row that Mr D had requested a loan from Ferratum.

And although Ferratum asked for details of Mr D's income and carried out a credit search before agreeing to lend, I no longer think it knew enough about Mr D's financial position to safely say that he was in a position to sustainably repay this loan. This also means, by this point, I no longer think Ferratum could safely rely on the information Mr D had provided it. So before this loan was given I think Ferratum should've had a thorough understanding of Mr D's financial situation – which should've included verifying some of the information he had provided.

Ferratum is correct in saying that there was no regulatory requirement for it to collect or view Mr D's bank statements. But I do think that it needed to take steps to verify the information he was providing. Ferratum could've verified the information Mr D had given it a number of ways. It could've asked for some evidence of Mr D's income and expenditure. Or, it could've asked to see copies of his bank statements, as I've done here. And the bank statements are the best indication of Mr D's ability to afford the loan at the time, so I don't think it's unreasonable to rely on the statements he's provided.

Having reviewed the bank statements at the time of the fifth loan was approved, I can see that the income Mr D declared of £2,751 was broadly correct. But it's clear from the statements that Mr D wasn't able to sustainably repay what he had borrowed. He had recently repaid over £1,700 to other short term lenders and still had over £1,000 of other outstanding short term liabilities – and these amounts needed to repay.

Proportionate checks would've also likely shown Ferratum that Mr D was spending a significant amount of money on betting websites – and in the weeks before this loan was approved, Mr D had spent over £700 on such sites. Taking into account his living costs and the repayments he was committed to making to Ferratum, Mr D didn't have enough disposable income to be able to afford the repayment he was committed to making.

#### *loans 6 – 16*

For all remaining loans, I think Ferratum still needed to have a thorough understanding of Mr D's financial position. I say this because Mr D continued to borrow from Ferratum for another 18 months. And he continued his pattern of borrowing so before borrowing again Ferratum on the day or shortly after a previous loan had been repaid.

So like Mr D's fifth loan Ferratum still should've been verifying the information he was providing – and Ferratum could've gone about doing this a number of different ways. But again, I've reviewed Mr D's bank statements throughout the remaining period of his borrowing.

Having reviewed Mr D's bank statements for the remainder of his borrowing his financial position doesn't change. The income that Mr D declares to Ferratum is broadly correct. But his financial position doesn't broadly change from the fifth loan. Mr D continues to spend significant amounts of money on betting websites each month as well as borrowing from a number of other short term lenders. For example in July 2015 he repaid over £2,000, August 2015 he repaid over £1,300, November 2015 over £1,600 and August 2016 Mr D repaid over £1,300 to other short term lenders. Mr D needed to repay these sums on top of his payments to Ferratum as well as his living costs such as rent and utilities.

So had Ferratum carried out proportionate checks – as it was required to do it would've seen that Mr D wasn't in a position to sustainably repay his loans. And as a responsible lender, Ferratum wouldn't have lent to him.

I've also thought about that Mr D's borrowing fluctuated and was as low as £150 and as high as £300. But having reviewed Mr D's expenditure during this period including his other short term lending commitments, proportionate checks would've shown these loans weren't affordable for him.

#### *loans 17 - 18*

Mr D's final two loans were instalment loans – so the repayments are structured slightly differently to the payday loans he had previously taken. Rather than Mr D being required to repay the principal and the interest on one payday Mr D was able to spread the cost of his repayments over a number of months – for example Mr D's final loan was due to be repaid over a 3 month period with his largest repayment being £253.62.

But taking into account Mr D's pattern of borrowing – he had either borrowed or had made payments to Ferratum almost every month for nearly 2 years by the time loan 17 was taken out, I still think it would've been proportionate for Ferratum to have been verifying the information Mr D was providing.

And had it verified the information provided, it would've seen that Mr D wasn't in a position to take on these loans. The income Mr D declared was broadly correct and when loan 17 was approved. But proportionate checks would've likely shown Ferratum that Mr D was still dependent on short term loans including instalment loans. When loan 17 was approved, Mr D had over £1,200 of outstanding payday commitments and he had also recently repaid over £2,000 to other lenders. Mr D was also still using betting websites and in the weeks leading up to this loan had spent nearly £900 on these sites.

When loan 18 was approved it likely it would've found out about the £600 of outstanding short term credit commitments (having recently repaid over £1,000 to other short term lenders). Mr D also had betting transactions of over £1,200 in the weeks leading up to this loan. And Mr D still had his regular living costs that needed to be repaid.

So taking all of this together, I think proportionate checks would've likely shown Ferratum that Mr D wasn't in a position to take on these loans and to repay the payments when each one became due. And as a responsible lender, Ferratum wouldn't have given Mr D these 2 instalment loans.

#### **what Ferratum should do to put things right**

To put things right for Mr D, Ferratum:

- refund all the interest and charges paid by Mr D on loans 4 - 18,
- add interest at 8% per year simple on the above interest and charges, from the date they were paid to the date of settlement †;
- remove any adverse information recorded on Mr D's credit file about this loans.

Ferratum has told us that it has waived the remaining balance on the final loan. If Ferratum wrote off any outstanding principle than it is entitled to offset any refund paid to Mr D against what was written off.

HM Revenue & Customs requires Ferratum to take off tax from this interest. Ferratum must give Mr D a certificate showing how much tax it's taken off if he asks for one.

**my final decision**

For the reasons given above, I partly uphold Mr D's complaint.

Ferratum UK Ltd should put things right for Mr D as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 13 April 2018.

Robert Walker  
**ombudsman**