

complaint

Mr H says Ferratum UK Ltd irresponsibly lent to him.

background

This complaint is about 22 payday loans Ferratum provided to Mr H between September 2016 and August 2018. He borrowed amounts between £100 and £350 with no significant breaks in the borrowing. Mr H repaid all his loans.

Our adjudicator upheld Mr H's complaint in part and thought the loans from loan four onwards shouldn't have been given. Ferratum disagreed. It made a partial offer of redress but Mr H was unhappy with this and the complaint was passed to me for a final decision.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. We've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Ferratum needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr H could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, 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:

- the *lower* a customer's 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 *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Ferratum was required to establish whether Mr H could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course 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 without undue difficulties and in particular the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as 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 won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

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

Ferratum asked Mr H for his monthly income which he said was £1,251, and it carried out credit checks. For loans one to three, given the loan amounts, what was then apparent about Mr H's circumstances and his history with Ferratum, I don't think it would've been proportionate to ask him for the amount of information needed to show the lending was unsustainable. There wasn't anything in the information Mr H provided or the information Ferratum should've been aware of, which meant it would've been proportionate to start verifying what Mr H was saying. The loans looked affordable and so I can't say it was wrong to approve these three loans.

But, as our adjudicator explained, proportionate checks for loans four to six would most likely have shown that:

- Mr H's expenditure for his regular living costs and other short-term loan repayments exceeded his monthly income for loan four, making this loan unaffordable;
- Mr H was gambling and had trouble managing his money when he asked for loans five and six. So he would have been unlikely to sustainably repay these and any further loans.

So I think it was wrong for Ferratum to have approved loans four to six.

I've also looked at the overall pattern of Ferratum's lending history with Mr H, with a view to seeing if there was a point at which Ferratum should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Ferratum should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mr H's case, I think that this point was reached by loan seven. I say this because:

- From loan seven onwards Mr H was provided with a new loan within a short time of settling a previous one. He'd already had seven loans in eight months. So Ferratum ought to have realised it was more likely than not Mr H was having to borrow further to cover the hole repaying his previous loan was leaving in his finances and that Mr H's indebtedness was increasing unsustainably.
- Mr H wasn't making any real inroads to the amount he owed Ferratum. Loan 22 was taken out about two years after Mr H's first. And it was for a larger amount. Mr H had paid large amounts of interest to, in effect, service a debt to Ferratum over an extended period.

So I think the pattern of borrowing showed that Mr H was persistently reliant on short-term loans and this showed that the loans were unsustainable. I think that Mr H lost out because Ferratum continued to provide borrowing from loan seven onwards because:

- these loans had the effect of unfairly prolonging Mr H's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.
- the sheer number of loans and deferrals was likely to have had negative implications on Mr H's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So I'm also upholding the complaint about loans seven to 22 and Ferratum should put things right.

putting things right – what Ferratum needs to do

- refund all interest and charges Mr H paid on loans four to 22;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement†;
- remove any negative information about loans four to six from Mr H's credit file;
- the number of loans taken from loans seven onwards means any information recorded about them is adverse. So all entries about loans seven to 22 should be removed from Mr H's credit file.

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

my final decision

For the reasons given above, my final decision is that I'm partially upholding Mr H's complaint. I require Ferratum UK Ltd to pay Mr H compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 August 2019.

Phillip Berechree
ombudsman