

The complaint

Mr E complains that the Hire Purchase agreement he entered into with 247 Money Group Limited trading as 247Money was unaffordable.

Mr E is represented by a third party in bringing his complaint. But for ease of reading I will only refer to Mr E in my decision.

What happened

In May 2021 Mr E acquired a car by entering into a Hire Purchase agreement with 247Money. The cash price of the car was £16,100, Mr E paid a deposit of £1,100 leaving a balance of £15,000 with added interest the total amount repayable was £26,183 over 60 months by monthly instalments of £418.06.

Mr E said he struggled financially and had to take out further borrowing to maintain his repayments. He complained to 247Money saying they shouldn't have lent to him as he couldn't afford the loan.

247Money said they'd carried out thorough checks to determine the affordability of the lending. They said they'd verified Mr E's income, checked his active credit commitments and had spoken to Mr E. They said they were aware that Mr E was using his overdraft but didn't have any concerns about how he was managing his finances.

Mr E wasn't happy with 247Money's response and referred his complaint to us.

Our investigator said that 247Money had done proportionate and reasonable checks prior to lending to Mr E. But said the information showed that Mr E was already struggling financially and so it was irresponsible of 247Money to add to his indebtedness. He said 247Money should:

- End the agreement and collect the car with nothing further to pay.
- Refund the deposit, adding 8% simple interest per year from the date of payment to the date of settlement.
- Calculate how much Mr E has paid in total and deduct £250 per month for fair usage. If Mr E has paid more than the fair usage figure, 247Money should refund any overpayments, adding 8% simple interest per year from the date of payment to the date of settlement.
- Remove any adverse information recorded on Mr E's credit file regarding the agreement.

And if there were any arrears after the settlement was calculated, 247Money should arrange an affordable repayment plan, treating Mr E with forbearance and due consideration.

247Money didn't accept our investigators findings. They said the information they'd seen at

the time of lending didn't indicate Mr E was struggling financially. They said Mr E had paid a deposit and added that he'd kept up to date with his repayments, apart from one which he cleared quickly. And hadn't raised any concerns to them about struggling to make his monthly instalments, they asked for an ombudsman 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.

I've considered the relevant rules, guidance and good industry practice when someone complains about irresponsible and/or unaffordable lending. There are two overarching questions I need to consider in order to decide what's fair and reasonable in all of the circumstances of the complaint. These are:

1. Did 247Money complete reasonable and proportionate checks to satisfy themselves that Mr E would be able to repay the credit in a sustainable way?

- a. if so, did 247Money make a fair lending decision?
- b. if not, would reasonable and proportionate checks have shown that Mr E could sustainably repay the borrowing?

2. Did 247Money act unfairly or unreasonably in some other way?

The Consumer Credit Conduct of Business sourcebook (CONC) requires 247Money to carry out a reasonable assessment of whether Mr E could afford to repay the loan in a sustainable manner. This is sometimes referred to as an "affordability assessment" or "affordability check".

The affordability checks should be "borrower-focused", meaning 247Money need to think about whether repaying the loan sustainably would cause difficulties or adverse consequences for Mr E. Basically it's not enough for 247Money to only think about the likelihood of Mr E being able to pay them back (credit risk) they must also consider the impact of repayment on Mr E himself (affordability risk).

There's no set list for what reasonable and proportionate checks are. But I'd expect lenders to consider the specific circumstances of the loan application. What constitutes a proportionate affordability check will generally depend on several factors such as the specific circumstances of the borrower, their financial history, current situation and whether there are any indications of vulnerability or financial difficulty.

247Money has shown that they verified Mr E's income, they checked his credit history and used Office for National Statistics (ONS) data. They also checked Mr E's bank statements for the preceding months leading up to the lending when assessing his ability to repay. And they carried out a validation call with Mr E. So, I agree with our investigator that 247Money carried out proportionate and reasonable checks before lending to Mr E.

I now need to determine whether having done so they made a fair lending decision.

247Money has said they saw Mr E had multiple transfers in and out of the account and that his bank account was overdrawn when they assessed whether the lending was affordable for him. But they were satisfied that Mr E was managing his finances. I've carefully thought about what 247Money has said. But simply obtaining information about a borrower doesn't, on its own, mean that a lender will have carried out a borrower focused assessment of the

borrower's ability to sustainably repay a loan.

CONC 5.2A.12 says the lender must consider the customer's ability to make repayments under the agreement:

- (3) *without the customer having to borrow to meet the repayments;*
- (4) *without failing to make any other payment the customer has a contractual or statutory obligation to make; and*
- (5) *without the repayments having a significant adverse impact on the customer's financial situation.*

And having looked at Mr E's bank statements I don't think he's able to make the monthly instalments without having to borrow to meet the repayments. Mr E consistently uses his overdraft facility, only ever being a day or two each month when he isn't in his overdraft with daily overdraft fees being applied to his account.

I can also see that on a regular basis Mr E was taking on further credit commitments by utilising a no interest loan membership service, that specialised in providing credit for consumers with a poor credit history. As well as a payday loan alternative. I can see the three months prior to the loan Mr E increased his indebtedness using these options by around £1,500. Mr E also had existing monthly debt collection commitments.

247Money said that the transactions in and out of the account didn't cause them any concern and it was for Mr E to manage his account. But Mr E transfers money of various amounts, in and out of his account numerous times over the course of each month, many times there are several transactions on the same day. And for very small amounts. I'd consider this to be unusual activity for someone who was managing their finances.

Overall, I'm satisfied that Mr E didn't have the funds necessary to make the monthly payments to this agreement, without him borrowing further or it having a significant adverse impact on his financial position.

So having carefully considered everything, I think that the checks 247Money did should have alerted them that Mr E wasn't able to sustainably make the payments to this agreement without further borrowing. So, I don't think 247Money lent responsibly to him as he wasn't in a position to take on this commitment.

Putting things right

As I don't think 247Money should have approved the lending. I've considered how this can be put right. The agreement should be ended, as I don't think it's fair for 247Money to be able to charge any interest or charges under the agreement. And Mr E should be refunded his deposit of £1,100 plus 8% simple interest.

When it comes to the instalments paid by Mr E, I've taken account of the fact that Mr E has had use of the car. I think it's fair he pays for that use. I don't think Mr E's monthly instalment of over £400 a month is reflective of what fair usage would be. This is because a proportion of each repayment went towards repaying interest.

There isn't an exact formula for working out what a fair usage should be. In deciding what's fair and reasonable I've thought about the amount of interest charged on the agreement, Mr E's likely overall usage of the car and what his costs to stay mobile would likely have been if he didn't have the car. In doing so, I agree with our investigator that Mr E should pay £250 for each month he'd use of the car.

My final decision

I uphold this complaint. And ask 247 Money Group Limited trading as 247Money to:

- End the agreement and collect the car with nothing further to pay.
- Refund Mr E's deposit of £1,100 adding 8% simple interest per year* from the date of payment to the date of settlement.
- On return of the car, calculate how much Mr E has paid in total and deduct £250 per month for fair usage. If Mr E has paid more than the fair usage figure, 247Money should refund any overpayments, adding 8% simple interest per year* from the date of payment to the date of settlement. If there is an underpayment after the settlement is calculated, 247Money should arrange an affordable repayment plan, treating Mr E with forbearance and due consideration.
- Remove any adverse information recorded on Mr E's credit file regarding the agreement.

*HM Revenue & Customs requires 247Money to take off tax from this interest. 247Money must give Mr E a certificate showing how much tax it's taken off if Mr E asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 8 November 2023.

Anne Scarr
Ombudsman