Financial Ombudsman Service

complaint

Mr G complains that Active Securities Limited, trading as 247 Moneybox, ("ASL"), gave him loans that he couldn't afford to repay. The complaint is brought to this service on Mr G's behalf by a claims management company. But for ease I shall refer below to all actions being taken by Mr G.

background

Mr G was given 9 loans by ASL between March 2016 and October 2016. He has repaid Loans 1 to 8. The loan details are as follows:-

Loan number	Date of loan	Loan amount	Amount repaid	Date of repayment
1.	2/3/16	£80	£94.72	24/3/16
2.	26/3/16	£150	£190.80	28/4/16
3.	29/4/16	£225	£277.20	27/5/16
4.	27/5/16	£200	£252.80	28/6/16
5.	1/7/16	£300	£367.20	28/7/16
6.	28/7/16	£400	£496	26/8/16
7.	26/8/16	£400	£508.80	28/9/16
8.	30/9/16	£500	£616	28/10/16
9.	30/10/16	£500	Unknown	Unpaid

Mr G said that ASL's loans had prevented him from meeting essential living expenses and that it hadn't made suitable affordability checks. He also said that he had a defaulted account in 2015 with an outstanding balance of £266 and other defaulted accounts in 2017. He had also been using six other payday loan lenders.

ASL said it had obtained Mr G's income and regular expenditure information before each loan and using these, it arrived at a free cashflow figure for him which was his net pay minus his outgoings. In addition to this, it built in a buffer of 55% for a margin of error. This meant that Mr G was only lent a maximum of 45% of his free cashflow figure. ASL also said that Mr G had declared to it before he obtained his loans that he had no other short term credit for it to consider and that all information provided was accurate. It also said that Mr G's credit score exceeded its minimum threshold for approval for the loans. ASL provided its credit search results to this service but we were unable to open these. The adjudicator asked ASL to provide further copies but it didn't do so.

The adjudicator concluded that ASL hadn't carried out proportionate checks before giving Loans 3 to 9 to Mr G. But he said that if it had, it would have seen that Loans 5 to 9 were unaffordable mainly due to Mr G's other payday loans and heavy gambling. He said that ASL should:

- Refund all interest and charges that Mr G paid on Loans 5 to 9;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- Remove any negative information about Loans 5 to 9 from Mr G's credit file.

*HM Revenue & Customs requires ASL to take off tax from this interest. ASL must give Mr G a certificate showing how much tax ASL has taken off if Mr G asks for one.

If ASL intends to apply the refund to reduce any outstanding capital balance, ASL must do so after deducting the tax.

ASL did not provide a response to the adjudicator's recommendations.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

ASL is required to lend responsibly. It needed to make checks to see whether Mr G could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr G was borrowing, and his lending history, but there was no set list of checks ASL had to do.

The Financial Conduct Authority was the regulator at the time Mr G borrowed from ASL. Its regulations require lenders to take "*reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences."* The regulations define 'sustainable' as being able to make repayments without undue difficulty, and that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

So, the fact that the amounts borrowed and the interest paid might have been low when compared to Mr G's income, or that he was able to repay most of the loans, doesn't necessarily mean the loans were affordable and that he was able to repay them in a sustainable manner. So, I can't assume that because Mr G was able to repay most of the loans that he was able to do so out of his normal income without having to borrow further.

ASL told us that before lending to Mr G, it had asked him about his income and expenditure. And it had carried out a credit check. I haven't seen details of its credit checks. I note Mr G said that he'd had a default in 2015. Generally, the information a consumer might see on their credit file might be very different to that seen by a lender. A lender might only see a small portion of the credit file, or some data might be missing or anonymised, or the data might not be up to date. So, without sight of ASL's credit check, I can't safely conclude that ASL would have been aware of the default from its own credit check for these reasons.

Mr G had declared a monthly income of £1,300 and regular expenditure of £210 to ASL at the time of Loan 1. The repayment amount for Loan 1 was around £95. I've thought about whether ASL's checks were proportionate for this loan. These checks showed that Mr G had a disposable income of around £1,090 at the time. So I think that the information ASL gathered suggested that this loan repayment was affordable, and I think it was reasonable for ASL to rely on the information it had at this early point in the lending. So, I'm not upholding Mr G's complaint about Loan 1.

Loan 2 was taken out two days after Loan 1 was repaid. The repayment amount had increased to around £190. ASL's records show that Mr G's disposable income had increased to £1,170. I think the repayment amount was still relatively modest compared to Mr G's declared disposable income. So, I think it was proportionate for ASL to consider Mr G's declared income and expenditure, without making further checks for Loan 2. So, I don't think ASL did anything wrong in giving Loan 2 to Mr G.

Mr G obtained Loan 3 on the day after he repaid Loan 2. It was his third loan in less than two months and the loan repayment amount had increased to around £277. Mr G had told ASL that his disposable income was £1,160. But by this time I think ASL should have been concerned about the frequency of Mr G's loan requests especially in view of his relatively high disposable income. I think they might have suggested to ASL that Mr G was using short term loans as a supplement to his normal income, rather than using them to meet a temporary one-off problem. So by the time of his third loan application I think it would have been proportionate for ASL to ask Mr G whether he was taking short term loans from other lenders at the same time. And for the same reasons, I think it should have done similarly for Loan 4 which was taken out on the day Loan 3 was repaid. I can't be sure it did this. I note that ASL asked Mr G for information about his other credit commitments but I don't think that Mr G would have necessarily known whether this request referred to short term lending as well as his regular credit commitments.

Loans 5 and 6 were taken out in the same month and Loans 7 to 9 were taken out each month thereafter. I note that the repayment amount for Loan 5 increased to £367.20 and the repayment amount for Loan 6 increased again to £496 with higher still repayment amounts for Loans 7 to 9. Mr G declared that his disposable income before these loans ranged from £1,160 to £1,200, but I think by this time it should have been clear to ASL that it wasn't able to rely on the information Mr G was providing about his financial situation. I think ASL should have been concerned as to whether Mr G could sustainably afford the repayments on any further loans, or if he was potentially relying on short term lending to get by. So I think ASL should have been looking to independently verify Mr G's income and expenditure so it could fairly assess the affordability of Loans 5 to 9. It could've done this in a number of ways. It could've asked for evidence of Mr G's income and expenditure such as payslips and bills or it could've looked at things like his bank statements.

But although I don't think the checks ASL made on Loans 3 to 9 were sufficient, that in itself doesn't mean that Mr G's complaint should succeed. I'd also need to be persuaded that the proportionate checks I've described above would have shown ASL that Mr G couldn't sustainably afford these loans. So I've looked at Mr G's bank statements to see what better checks would have shown ASL.

With regard to Loans 3 and 4, I think it was still reasonable for ASL to rely on the information Mr G had provided about his financial position which showed a disposable income of £1,160. But I would also have expected ASL to have supplemented that information by asking Mr G if he had other short term credit commitments. To find out more about these, I've reviewed Mr G's bank statements for the months before he took Loans 3 and 4. I can see that Mr G had taken out other short term lending in those months which would have required repayment around the same time as Loans 3 and 4. But I also don't think that carrying out better checks would've uncovered anything that would've stopped ASL from giving Loans 3 and 4 to Mr G. So, I'm not intending to uphold Mr G's' complaint about Loans 3 and 4.

With regard to Loan 5, as I've said above, I think ASL should have been independently checking the information Mr G had provided. To find out more about this, I've reviewed Mr G's bank statements for the month before he took Loan 5. The bank statements might not have shown ASL everything it would've seen by carrying out proportionate checks. But I think they are the best indication of Mr G's ability to afford the loans at the time they were approved. So I don't think it's unreasonable to rely on these.

In the month before Loan 5, I can see that Mr G's income was broadly in line with what Mr G had declared to ASL. But although I can't see that the statements specifically refer to most of the normal regular expenditure that I'd expect to see such as rent payments, council tax, water and utility bills, I can see other living costs and regular financial commitments of around £680. I can also see that Mr G had taken other short term lending totalling around £943 in the month before Loan 5 which would have required repayment around the same time as Loan 5. And Mr G was also gambling heavily. So, if ASL had carried out what I consider to be proportionate checks before Loan 5, I think they would have suggested that Mr G didn't have sufficient money to repay Loan 5. So Loan 5 wasn't sustainable.

Mr G's statements in the month before Loan 6 show that his income was still around £1,300. But I can see that his living costs, regular financial commitments and other short term lending exceeded his income. So, if ASL had carried out what I consider to be proportionate checks before Loan 6, I think it's likely that they would have suggested that Loan 6 wasn't sustainable. So as a responsible lender, I don't think ASL would have considered this a sustainable loan.

With regard to Loan 7, had ASL reviewed Mr G's bank statements, it would have seen that he was earning around £1,274 which was slightly less than he'd declared to it. And ASL also would have become aware that Mr G's living costs and regular financial commitments were around £671 and he'd taken short term lending totalling around £330 in the month before Loan 7 which would have required repayment around the same time as Loan 7. So, if ASL had carried out what I consider to be proportionate checks before Loan 7, I think they would have suggested that Loan 7 wasn't sustainable.

I note from Mr G's bank statements in the months before Loans 8 and 9 that his financial situation didn't improve. Before Loan 8, his living costs, regular financial commitments and short term lending exceeded his monthly income. And in the month before Loan 9, Mr G's short term lending alone exceeded his monthly income. The short lending would again have required repayment around the same time as his loan repayments to ASL. So, if ASL had carried out what I consider to be proportionate checks before Loans 8 and 9, I also think it's likely that it would have concluded that Loans 8 and 9 weren't sustainable.

In summary I think the checks ASL made for Loans 1 and 2 were proportionate. But I don't think ASL did enough checks for any of the remaining loans. I think proportionate checks would have shown ASL the state of Mr G's finances and that Mr G couldn't afford to sustainably repay Loans 5 to 9. So I don't think ASL should have given Mr G, Loans 5 to 9 and I think it needs to pay Mr G some compensation relating to these loans

my final decision

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Active Securities Limited, trading as 247 Moneybox, to:

1. Refund all interest and charges that Mr G paid on Loans 5 to 8;
2. Pay interest of 8% simple* a year on all refunds from the date of payment to the date of settlement;
3. With regard to Loan 9, refund all the interest and charges that Mr G has paid on Loan 9, and pay 8% simple interest* a year on the refunds from the date of payment to the date of settlement;
4. Write off any unpaid interest and charges from Loan 9;

5. Apply the refunds referred to above to reduce any capital outstanding on Loan 9 and pay any balance to Mr G; and
6. Remove any adverse information about Loans 5 to 9 from Mr G's credit file.

*HM Revenue & Customs requires ASL to take off tax from this interest. ASL must give Mr G a certificate showing how much tax it has taken off if he asks for one. If ASL intends to apply the refunds to reduce any outstanding capital balances, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 20 December 2018.

Roslyn Rawson
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