

complaint

Mr D says Active Securities Limited, trading as 247 Moneybox, lent to him irresponsibly. He says 247 Moneybox didn't carry out the right affordability checks and lent to him when he was also borrowing from various other lenders.

background

I issued a provisional decision on 8 June 2018. A copy of my provisional decision is attached and it forms part of this final decision. In my provisional decision I explained why I thought the complaint should be upheld in part and I asked both parties to let me know if they had anything else to add.

Mr D accepted the provisional decision and didn't have anything else to add. 247 Moneybox also responded; it said, *"it is important we acknowledge that the FCA says it does not consider 'repeat borrowing and multiple borrowing... in itself is harmful... Repeat borrowing can be a useful means of managing cyclical income shortfalls.'"*

247 Moneybox didn't make any specific comments on what I'd said about Mr D's loans.

my findings

I've considered again all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account the law, good industry practice and any relevant regulations at the time.

It's disappointing 247 Moneybox didn't have anything to say specifically about Mr D's complaint. Instead, it provided a partial quote, without citation or context, about repeated borrowing generally. To be clear, in my provisional decision I looked at several issues including the repeat borrowing in Mr D's specific circumstances, rather than simply broader repeat borrowing.

The partial quote 247 Moneybox has provided appears to be from the FCA's consultation paper CP18/12¹. The particular section from which 247 Moneybox has quoted dealt with home-collected credit, which is a different type of credit product from the payday loans Mr D was granted. The quote in full says:

"Repeat borrowing and multiple borrowing is clearly a prevalent feature of home-collected credit use. We do not consider that this in itself is harmful. Providing creditworthiness assessments are carried out effectively, weekly repayments should be affordable and sustainable. Repeat borrowing can be a useful means of managing cyclical income shortfalls."

Mr D's loans were not home-collected credit and were not repaid weekly; the FCA wasn't talking about payday loans here. I don't think the quote is directly relevant to the payday loans taken by Mr D and so I don't put much weight on it.

¹ "High-cost Credit Review: Consultation on rent-to-own, home-collected credit, catalogue credit and store cards, and alternatives to high-cost credit. Discussion on rent-to-own pricing." <https://www.fca.org.uk/publication/consultation/cp18-12.pdf>

I also think it's interesting that the part of the quote 247 Moneybox omitted refers to effective creditworthiness assessments. I said 247 Moneybox didn't always do enough to make sure the loans were affordable and it hasn't responded on this point.

It's also important to remember that what I am looking into is Mr D's particular complaint about irresponsible lending. It might be that, in some cases, depending on the amounts borrowed, the time period in question, the number of loans and the income of the borrower, repeat borrowing might not be harmful.

But in Mr D's circumstances – as I explained in my provisional decision, I was satisfied that 247 Moneybox's lending was at times irresponsible. I explained why I thought this was the case and made proposals for a fair and reasonable outcome.

Nothing 247 Moneybox has said has changed my mind about what I said in my provisional decision. So I'm upholding Mr D's complaint in part, for the same reasons as given in my provisional decision.

my final decision

I uphold this complaint in part. Active Securities Limited must put things right by doing what I set out in my provisional decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 26 July 2018.

Matthew Bradford
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Mr D says Active Securities Limited, trading as 247 Moneybox, lent to him irresponsibly. He says 247 Moneybox didn't carry out the right affordability checks and lent to him when he was also borrowing from various other lenders.

background

From the information provided by 247 Moneybox, it looks like Mr D had 24 loans with it. I've set out some of the details 247 Moneybox provided about these loans in the appendix to this decision.

One of our adjudicators looked at this complaint and said he thought 247 Moneybox shouldn't have given Mr D loans five to 24. He made recommendations about what 247 Moneybox should do to put things right.

247 Moneybox didn't respond to the adjudicator's recommendations, so the complaint has been passed to me to decide.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I've taken into account the law, good industry practice and any relevant regulations at the time.

At the time of loans 1-19, the regulator was the Office of Fair Trading (OFT) and relevant regulations included its guidance on irresponsible lending (ILG). From loan 20 onwards, the regulator was the Financial Conduct Authority (FCA) and relevant regulations included its Consumer Credit sourcebook (CONC).

The ILG and CONC contain similar guidance for lenders about responsible lending. Among other things, the regulations say lenders should carry out affordability checks which are proportionate in the circumstances of the loan.

The regulations also say repayments should be sustainable (*i.e.* repayable from the borrower's income or savings) and that lenders shouldn't allow a borrower to enter into consecutive credit agreements where it would be unsustainable to do so. The same guidance also notes that payday loans are not appropriate for borrowing over long periods of time as their purpose is to help deal with a temporary cash flow problem (ILG 6.25 and CONC 6.7.21-22 G).

did 247 Moneybox carry out proportionate checks?

247 Moneybox says it asked Mr D about his income and expenditure, carried out credit checks and verified Mr D's employment. I've only seen evidence of this from 26 June 2013 (*i.e.* from loan 14) onwards. I can see that from this point, 247 Moneybox's expenditure questions include asking about rent/mortgage, credit commitments and 'other' expenses. Although 247 Moneybox hasn't been able to show what it recorded before this date, I think it's likely it would at least have asked Mr D about his income. Throughout the period of lending for which I've seen data, 247 Moneybox recorded Mr D's income as £1,330 a month and I think this is likely to be the figure declared for all loans.

Mr D's first three loans were all for £60 and I think it would've been reasonable for 247 Moneybox to assume the loan repayment would be affordable based on his income. Although Mr D took out these three loans within three months, I don't think a pattern of repeated or unsustainable borrowing could reasonably be said to have emerged within this period.

But I think by the time of the fourth loan 247 Moneybox's checks ought to have gone further. I haven't seen evidence that it asked Mr D anything about his expenditure at the time. I note that Mr D seems to have had problems repaying loan three - 247 Moneybox charged him a late payment and default fee. The information 247 Moneybox had provided says the contractual repayment date for loan three was 30 April 2012, so Mr D repaid the loan about a month late. After repaying the loan late, it was only eight days until Mr D applied for loan four. Taking all of the circumstances into account, I think it would've been proportionate for 247 Moneybox to ask Mr D for a reasonably detailed breakdown of his monthly expenditure, so it could take into account his regular living costs and his credit commitments, to make sure this loan could be repaid sustainably.

The fifth loan also followed the preceding loan closely, with a gap of just 13 days. At this point, I think 247 Moneybox ought to have been concerned Mr D might be dependent on short-term credit. He'd been borrowing from 247 Moneybox for six months, with only short gaps between the loans. This suggests Mr D was running out of money shortly after repaying 247 Moneybox and so potentially wasn't in a position to keep repaying new borrowing from a sustainable source. Equally, continued approval of new lending meant Mr D might end up using 247 Moneybox's product over the long term, something the regulations said wasn't appropriate.

Taking all of the circumstances into account, I think 247 Moneybox ought to have asked Mr D to substantiate his income and expenditure. This could include asking for things like payslips and/or bank statements. I think the same should apply to the rest of the loans, for the same reasons – although it might be that there came a point where the number of loans and the length of the total period of lending meant it was inappropriate for 247 Moneybox to lend at all, bearing in mind ILG 6.25 and CONC 6.7.21-22 G.

what would proportionate checks have shown?

loan four

I think it's likely proportionate checks would've suggested this loan was affordable. I've taken into account Mr D's declared income of £1,330 a month and I've thought about the sort of expenditure I think 247 Moneybox should've asked about. I don't think Mr D's expenditure on housing, food, transport and car insurance significantly exceeded £300. Mr D may also have had some regular financial commitments, but I don't think it's likely information about these would've led 247 Moneybox to believe this loan wasn't affordable.

loans five to thirteen

I've looked at this period of about a year to decide what I think it's likely 247 Moneybox would've seen if it had asked Mr D to substantiate his income and expenditure. I've used Mr D's bank statements to help me do this as I think it's a fair and reliable way to build up a picture of his financial circumstances at the time.

If 247 Moneybox carried out proportionate checks for loan five, I think it would've seen Mr D's typical living monthly costs were around £300-£325, he was also paying regular creditors £325-£350 and had over £400 of other outstanding short-term debt. Mr D was also spending £50-£150 on gambling in the months before he took out the loan. There are also numerous fees for returned direct debits and unauthorised overdraft charges. So I think proportionate checks would've likely shown that Mr D was in financial difficulty. Taking into account Mr D's usual living costs and existing unpaid short-term debt, I don't think it's likely a responsible lender would've concluded the loan was affordable.

Loan six started just a few days after loan five ended – which I again think suggests Mr D was in some financial difficulty. I think it's likely a full review of Mr D's finances at this time would've revealed he was spending more money on gambling – around £350. I think his usual living costs of £300-£325

would've remained the same. And Mr D was also paying around £350-£400 to regular creditors and £500 to short-term lenders. So at around this time, Mr D's expenditure was exceeding his income. I think proportionate checks would've shown 247 Moneybox this – and a responsible lender wouldn't have lent in these circumstances.

Loans seven to 13 were taken out between October 2012 and May 2013. I've reviewed Mr D's bank statements for this period and am satisfied the situation remains much as I've described above for loans five and six. What is reasonably clear from my review is that Mr D wasn't borrowing to meet a temporary cash flow problem, but instead because he was relying on short-term finance to keep up with his regular expenditure – which included reasonably large sums spent on gambling. There is an identifiable pattern of Mr D running out of money shortly after being paid and then borrowing from short-term lenders to pay back existing creditors and meet other spending commitments. I don't consider this to be a sustainable situation. I note, for example, that in April 2013 Mr D borrows £500 from two other short-term lenders and continues to incur returned direct debit and unauthorised overdraft charges because of his unsustainable expenditure.

For these reasons, I don't currently think loans five to thirteen were lent responsibly and I'm planning to uphold the complaint about them.

loans 14 to 24

These loans were taken out between July 2013 and October 2014. I think if 247 Moneybox had continued to verify Mr D's income and expenditure, as I think it should've, it would likely have seen Mr D's financial circumstances hadn't improved (compared to what I've described above). In September 2013 for example, Mr D spends around £550 on his usual living costs (petrol/transport, food, communication etc.) and around £850 to regular creditors, over £200 to short-term creditors and over £400 on gambling. It again seems likely that proportionate checks would've shown 247 Moneybox that Mr D's expenditure exceeded his income, with Mr D using short-term credit to fill the gap. I think a responsible lender would've decided that wasn't a sustainable situation.

The bank statements Mr D has provided only cover the period up to mid-January 2014. But I'm satisfied that during this period it's unlikely that proportionate checks would've shown further lending could be sustainably repaid. In the last month for which Mr D has provided bank statements, he is paid £1,395 and spent over £700 – more than half his salary – on gambling, whilst continuing to borrow from other short-term lenders as he runs out of money before the end of the month. Had it carried out proportionate checks, I don't think 247 Moneybox could reasonably have concluded Mr D could sustainably repay further borrowing. I also think it ought to have realised Mr D had been using short-term credit for longer than was really appropriate for the product, given the number of consecutive agreements he'd entered in to.

Whilst I haven't seen bank statements which cover the period of lending covering loans 19-24, I don't think I need to see more to make a fair finding in this case. By the time Mr D applied for loan 19 he'd been taking out loans with 247 Moneybox for over two years, generally increasing the amount he was borrowing and with only short (or sometimes no) breaks between the loans. There was a four month gap between loans 18 and 19, but in the overall context of Mr D's borrowing I don't think this is particularly significant. I think 247 Moneybox ought to have realised – either from the proportionate checks it should've done or from Mr D's borrowing history – that the lending had become unsustainable by, and most likely before, this point.

In summary, I don't think the checks 247 Moneybox carried out from loan four onwards were proportionate, taking into account all of the circumstances known at the time. I also think that 247 Moneybox shouldn't have given Mr D any of the loans it granted from loan five onwards. I think proportionate checks would've shown many of these were unaffordable and could not be repaid sustainably. Furthermore, I think 247 Moneybox should've realised from Mr D's borrowing history that he was entering into consecutive agreements in a way that was likely to be unsustainable and was

using short-term credit in a way that wasn't appropriate bearing in mind what the relevant regulations and guidance say about this type of credit.

I'm therefore planning to uphold Mr D's complaint about loans five to 24.

what 247 Moneybox needs to do to put things right

247 Moneybox must:

- refund all interest and charges Mr D paid on loans 5-24
- add to the above interest at 8% simple per year, from when Mr D paid them until he gets the refund†
- remove any adverse information about these loans from Mr D's credit history

† HM Revenue & Customs requires 247 Moneybox to take off tax from this interest.

247 Moneybox must give Mr D a certificate showing how much tax it's taken off if he asks for one.

my provisional decision

I'm planning to uphold Mr D's complaint in part and to tell Active Securities Limited to put things right by doing what I've set out above.

[signed]

Matthew Bradford
ombudsman

Appendix

Loan no.	Date Borrowed	Date repaid	Amount borrowed
1	05/01/2012	27/01/2012	£60
2	28/02/2012	28/03/2012	£60
3	29/03/2012	29/05/2012	£60
4	06/06/2012	29/06/2012	£60
5	12/07/2012	27/07/2012	£100
6	30/07/2012	26/09/2012	£125
7	05/10/2012	28/11/2012	£150
8	24/12/2012	31/01/2013	£125
9	08/02/2013	26/02/2013	£100
10	08/03/2013	26/03/2013	£125
11	29/03/2013	26/04/2013	£100
12	28/04/2013	29/05/2013	£150
13	30/05/2013	26/06/2013	£150
14	26/06/2013	29/07/2013	£125
15	02/08/2013	28/08/2013	£150
16	05/09/2013	29/09/2013	£175
17	07/10/2013	29/10/2013	£250
18	31/10/2013	29/11/2013	£150
19	05/03/2014	27/03/2014	£200
20	09/04/2014	30/05/2014	£300
21	31/05/2014	27/06/2014	£125
22	01/07/2014	29/07/2014	£200
23	02/08/2014	26/09/2014	£200
24	03/10/2014	27/11/2014	£300