

complaint

Mr G complains that Active Securities Limited (trading as 247 Moneybox) gave him loans that he couldn't afford to repay.

background

Mr G was given 25 loans by 247 Moneybox between October 2012 and April 2016. He was unable to repay many of his loans on time, so needed to defer some of his repayments, and had to pay additional interest. He hasn't yet repaid his final loan. A summary of his borrowing is shown in an appendix to this decision.

When Mr G first complained to 247 Moneybox it offered to write off his outstanding balance and remove some adverse information from his credit file. Mr G didn't accept that offer so he brought his complaint to this service.

Mr G's complaint has been assessed by one of our adjudicators. He thought that the checks 247 Moneybox had done on the first three loans were proportionate. But he didn't think the lender had done enough checks on the rest of the loans. And he thought that proportionate checks would have shown 247 Moneybox that Mr G couldn't afford to repay loans 4 to 25. So he asked 247 Moneybox to pay Mr G some compensation.

247 Moneybox didn't agree with that assessment. So, as the complaint hasn't been resolved informally, it has been passed to me, an ombudsman, to decide. This is the last stage of our process. If Mr G accepts my decision it is legally binding on both parties.

my 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 also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

247 Moneybox was 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 247 Moneybox had to do.

The first 11 loans were given when 247 Moneybox was regulated by The Office of Fair Trading (OFT). Its guidance was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower could *sustainably* repay their loans. The OFT's Irresponsible Lending Guidance states *"Assessing affordability is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties."*

The guidance goes on to say that repaying credit in a sustainable manner means being able to repay credit *"out of income and/or available savings"* and without *"undue difficulty."* And it defines *"undue difficulty"* as being able to repay credit *"while also meeting other debt repayments and normal/reasonable outgoings"* and *"without having to borrow further to meet these repayments"*

The Financial Conduct Authority was the regulator at the time Mr G took the rest of his loans from 247 Moneybox. Its regulations for lenders are set out in its consumer credit sourcebook (generally referred to as "CONC"). These regulations – in CONC 5.3.1(2) - 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.*" CONC 5.3.1(7) defines 'sustainable' as being able to make repayments without undue difficulty. And explains 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 repayments might have been low in comparison with Mr G's income doesn't necessarily mean the loans were affordable for him and that he managed to repay them in a *sustainable manner*. In other words I can't assume that because Mr G managed to repay most of his loans that he was able to do so out of his normal means without having to borrow further.

247 Moneybox has given us some details of the checks it did before lending to Mr G. But it hasn't provided us with evidence of the results of most of those checks. 247 Moneybox says that Mr G provided details of his normal income, and expenditure, 22 times during the period he was borrowing. And it says he confirmed each time that he wasn't borrowing from any other short term lenders at the same time.

When Mr G was taking his first few loans, I don't think it was entirely unreasonable for 247 Moneybox to rely on what he declared about his income and expenditure. But since he was telling the lender he had a significant amount of disposable income each month, I think it should have become increasingly concerned that Mr G was needing to borrow regularly and was having some difficulty in repaying relatively modest loans – he was late repaying his third loan.

But, given the circumstances of this complaint, I have decided that the checks 247 Moneybox says it did before the first three loans were proportionate. And the results of those checks suggested that Mr G was able to sustainably repay the loans. So I don't think 247 Moneybox was wrong to give the first three loans to Mr G.

But as I said earlier, I think 247 Moneybox's concerns about Mr G's situation should have been increasing. And by the time of the fourth loan I think that should have resulted in 247 Moneybox asking Mr G for some independent evidence of the information he was giving about his financial situation. By this time Mr G had been borrowing continuously from 247 Moneybox for four months and had faced difficulty repaying an earlier loan.

So I don't think the checks 247 Moneybox did at the time of loan 4 were proportionate. And Mr G then continued to borrow almost continuously from 247 Moneybox for the next three years. Although there was a gap of around three months between loans 6 and 7, I think what had gone on before should have meant 247 Moneybox remained concerned about Mr G's true financial position and his ability to sustainably afford the loans. I think 247 Moneybox should have conducted detailed checks on Mr G's finances before agreeing any of his remaining loans.

But although I don't think the checks 247 Moneybox did from loan 4 onwards were sufficient, that in itself doesn't mean that Mr G's complaint should succeed. I'd also need to be persuaded that what I consider to be proportionate checks would have shown 247 Moneybox that Mr G couldn't sustainably afford the loans. So I've looked at Mr G's bank statements, and what he's told us about his financial situation, to see what better checks would have shown 247 Moneybox.

Throughout the time that Mr G was borrowing from 247 Moneybox he was gambling heavily. In some months he gambled more than ten times his normal income. And to support this gambling expenditure he was borrowing from a number of other short term lenders. I think the true extent of Mr G's financial difficulties would have been apparent to 247 Moneybox if it had asked Mr G to provide evidence of his financial situation. And that would have showed that he hadn't any money left over to repay the loans he was asking to take.

I think that what I consider to be proportionate checks would have shown 247 Moneybox that Mr G couldn't sustainably afford to repay the loans he was asking for. And so, as a responsible lender, it would have declined these requests. So 247 Moneybox needs to pay Mr G some compensation.

putting things right

I don't think 247 Moneybox should have agreed to lend to Mr G after, and including, the loan that he took on 4 January 2013 (loan 4). So for each of those loans 247 Moneybox should;

- Refund any interest and charges applied to the loans.
- Add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*.
- Remove any adverse information recorded on Mr G's credit file in relation to the loans.

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

It appears that Mr G still owes 247 Moneybox some of the principal balance he borrowed on his final loan. 247 Moneybox may deduct this from the compensation that is due to Mr G. But, to be clear, that outstanding balance should be recalculated to remove any interest and charges, but taking account of any repayments Mr G has made on that loan as though they were applied against the principal sum borrowed.

my final decision

My final decision is that I largely uphold Mr G's complaint and direct Active Securities Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 18 October 2017.

Paul Reilly
ombudsman

Summary of Mr G's Borrowing from 247 Moneybox

Loan Number	Borrowing Date	Repayment Date	Loan Amount
1	08/10/2012	31/10/2012	£ 110
2	12/11/2012	30/11/2012	£ 185
3	30/11/2012	02/01/2013	£ 260
4	04/01/2013	28/02/2013	£ 300
5	28/02/2013	30/04/2013	£ 490
6	30/04/2013	07/08/2013	£ 690
7	12/11/2013	27/11/2013	£ 150
8	27/11/2013	30/12/2013	£ 400
9	31/12/2013	27/02/2014	£ 690
10	04/03/2014	31/03/2014	£ 500
11	31/03/2014	12/06/2014	£ 690
12	13/06/2014	27/06/2014	£ 600
13	03/07/2014	22/07/2014	£ 690
14	24/07/2014	29/08/2014	£ 600
15	29/08/2014	30/09/2014	£ 690
16	30/09/2014	31/12/2014	£ 690
17	05/01/2015	19/02/2015	£ 690
18	26/02/2015	09/04/2015	£ 690
19	14/04/2015	30/04/2015	£ 690
20	01/05/2015	08/09/2015	£ 690
21	08/10/2015	30/10/2015	£ 500
22	30/10/2015	03/12/2015	£ 700
23	29/12/2015	04/02/2016	£ 500
24	20/02/2016	31/03/2016	£ 500
25	01/04/2016	-	£ 600