

## **complaint**

Mrs T complains that Active Securities Limited, trading as 247 Moneybox, ("ASL"), gave her loans that she couldn't afford to repay.

## **background**

Mrs T was given 49 loans by ASL between April 2011 and October 2016. She has repaid all of them, although some were paid late. The first loan was for £75, and the second loan, taken three months later, was for £60. Loans 3 to 19 ranged in size between £100 and £200. From Loan 20 onwards, most of the loans were either £300 or £400. And most of the loans were taken on the day of repayment of the previous loan or a few days after. Mrs T said that she was dependent on ASL's loans and was trapped in a spiral of debt with loan repayments taking much of her wages. She had to keep borrowing to cover basic living costs and essential bills. She also said she had debts on several credit agreements, and suffered from a severe gambling addiction at the time she was taking out these loans. She would like a refund of the interest and charges paid on the loans.

ASL said that it had carried out sufficient affordability checks on Mrs T's loan applications. It had asked Mrs T for details of her income and outgoings including credit commitments, and carried out a credit check. It said that the loan amounts ranged from 4% to 14% of Mrs T's net income and that she had sufficient disposable income based on her declared income and expenditure to meet its loan repayments. It had offered Mrs T £550 as a goodwill gesture, which she rejected.

## *our adjudicator's view*

The adjudicator concluded that ASL hadn't carried out proportionate checks before giving Mrs T the loans. He said that ASL hadn't provided evidence to show that it obtained details of her income and outgoings before it gave her Loans 1 to 12. When Mrs T requested Loans 1 and 2, he thought that ASL should've at least asked Mrs T about her income to establish if she could afford to repay the amounts requested. When Mrs T applied for Loan 3, he thought that ASL should've asked some questions about things such as her normal living costs and regular financial commitments before giving her this loan. This was because Loan 3 was requested within four days of repaying Loan 2 and the amount requested was slightly higher. And before Loan 4, he thought that ASL should have asked Mrs T for details of her normal living costs, regular financial commitments and other short term financial commitments, as this loan was taken within three days of repaying the previous loan. From Loan 5 onwards, the adjudicator thought that ASL should've requested independent information to review Mrs T's financial circumstances before giving her the loans. This was because a pattern of sequential borrowing was clearly developing, and she took out this loan on the same day that she repaid Loan 4 and repeated this on multiple occasions. He also said that ASL should've checked to ensure she wasn't becoming dependent on short term credit. So he thought that requesting information that verified Mrs T's income and outgoings would've helped to confirm the information she'd provided about her declared income and outgoings, and to decide if it was appropriate to continue lending to her.

From the information the adjudicator had seen, he thought that proportionate checks would have shown that Mrs T's income for Loans 1 and 2 was sufficient for her to be able to afford the relatively low repayments on these loans. With regard to Loans 3 and 4, he noted from Mrs T's bank statement that she had an income of around £900, but Mrs T had said that her normal living costs and financial commitments were just under £900. She had no outstanding short term financial commitments at the time. So, the adjudicator didn't think that Mrs T had sufficient disposable income to afford these loans. And from Loan 5 onwards he thought that better checks would have shown ASL that all the loans were unaffordable for Mrs T, mainly due to her large amount of gambling transactions. So he recommended that ASL should:-

- Refund all interest and charges that Mrs T paid on the loans 3 to 49;
  - Pay interest\* of 8% simple a year on all refunds from the date of payment to the date of settlement;
  - Remove any adverse information about the loans from Mrs T's credit file.
- \*HM Revenue & Customs requires ASL to take off tax from this interest. ASL must give Mrs T a certificate showing how much tax it's taken off if she asks for one.

ASL disagreed and responded to say that it had noted that the adjudicator had made an adjudication that the loans were unaffordable based on the expenditure figures provided by Mrs T. But, it said that Mrs T had told it on her application that her expenditure was far lower than the amount she'd provided to the adjudicator. And it was concerned that a higher weight was placed by the adjudicator on the information Mrs T had provided to this service rather than the information she had provided to it at the point of application.

#### *my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mrs T and to ASL on 14 November 2017. I summarise my findings:

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

I noted that the guidance in place at the time of Mrs T's first 19 loans was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower can sustainably repay their loans. The Office of Fair Trading's ("OFT") Irresponsible Lending Guidance said that assessing affordability is a borrower-focussed test which involved 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 also said that repaying credit in a sustainable manner meant being able to repay credit "*out of income and/or available savings*" and without "*undue difficulty*." And it defined "*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*".

I said that the final 30 loans taken by Mrs T were regulated by the Financial Conduct Authority. Its regulations for lenders are set out in its consumer credit sourcebook and are similar to those from the OFT in many respects.

I didn't think that the fact that Mrs T was able to repay the loans and that most of the loans were paid on time, necessarily meant they were affordable for her or that she managed to repay them in a sustainable manner. I also couldn't assume that Mrs T was able to do so out of her normal means without having to borrow further. And I was aware that she took loans from other payday lenders to supplement her income.

With regard to Loans 1 to 12, I'd asked the adjudicator to check with ASL as to what information Mrs T had provided to it with regard to her income and expenditure. It had said that Mrs T had provided it with a free cash flow figure of between £1,377 and £1,499 per month. It said this reflected Mrs T's net income minus essential/priority bills. But, ASL couldn't provide any evidence to show a breakdown of the actual information provided to it by Mrs T. It said that it wasn't required to do this at the time.

From Loan 13, ASL said that it had obtained separate income and expenditure information from Mrs T. It had noted that Mrs T had a relatively high income and relatively low expenditure (which included other credit commitments and "other" expenditure). ASL said that Mrs T had a disposable income of at least £849 which appeared sufficient to repay her loans. And I noted that ASL had said that it should be able to rely on the income and expenditure figures it received from Mrs T for Loan 13 onwards. But whilst these had showed a significant amount of disposable income each month, I also thought ASL should have been concerned that Mrs T was needing to borrow very regularly and was having some difficulty in repaying some of the loans, even though these were relatively modest in size compared to Mrs T's disposable income. I noted that before Loan 13, seven of the loans appeared to be repaid late.

Loans 1 and 2 were for £75 and £60 respectively. The amounts Mrs T had asked to borrow were fairly small compared to the cash flow information Mrs T had given to ASL. And I didn't think at that stage of its relationship with Mrs T that ASL had any reason to doubt the information she'd provided. And there was also little to suggest to ASL at this stage that Mrs T wasn't using the loans in the way they were intended – a short term solution to a temporary cash flow problem. So I didn't think ASL was wrong to agree to these loans.

Loan 3 was taken four days after Loan 2 was repaid and was for an increased amount of £100. But the cash flow information that Mrs T gave to ASL showed that she had a relatively substantial amount of money left over each month. Overall, I thought it was reasonable for ASL to have relied on that information here especially as the loan amount was relatively modest and the previous loan had been paid on time. So I didn't think that ASL had done anything wrong in giving Mrs T Loan 3.

By the time of Loan 4, Mrs T's level of borrowing from ASL had again increased and it was her third loan in less than two months, made three days after Loan 3 was repaid. I thought ASL should have been concerned about the frequency of Mrs T's loan requests. I thought they might have indicated to ASL that Mrs T was using short term loans as a supplement to her normal income, rather than using them to meet a temporary one-off problem. So at the time of her fourth application I thought it would have been proportionate for ASL to ask Mrs T whether she was taking short term loans from other lenders at the same time.

When Mrs T approached ASL for Loan 5, this was Mrs T's fourth loan in just over two months. So I thought ASL should have been concerned by then as to whether Mrs T could sustainably afford the repayments on any further loans, or if she was potentially relying on short term lending to get by. I thought it should have been clear to ASL from this point that it wasn't able to rely on the information Mrs T was providing about her financial situation. I thought ASL should have been looking to independently verify Mrs T's income and expenditure so it could fairly assess the affordability of Loans 5 onwards. I said that it could've done this in a number of ways. It could've asked for evidence of Mrs T's income and expenditure such as payslips and bills or it could've looked at things like her bank statements.

Although I didn't think the checks ASL did for Loans 4 onwards were sufficient, that in itself didn't mean that Mrs T's complaint about these should succeed. I also needed to see whether what I considered to be proportionate checks would have shown ASL that Mrs T couldn't sustainably afford the loans. So I'd looked at the bank statements we'd received from Mrs T, and what she'd told us about her financial situation, to see what better checks would have shown ASL.

With regard to Loan 4, I said that I would have expected ASL to ask about Mrs T's short term credit commitments. To find out what if any outstanding short term commitments Mrs T had, I'd reviewed her bank statements which are the best indication of her commitments at the time. But, I'd not seen anything on Mrs T's bank statements to suggest that she had any other short term commitments to meet in the same month that this loan was due to be repaid. Otherwise, as Loan 4 was for the relatively moderate amount of £125, and on the basis of Mrs T's declared cash flow information, I didn't think ASL was wrong to agree this loan.

By the time of Loans 5 and 6, I would have expected ASL to make detailed checks on Mrs T's financial situation, for example by checking Mrs T's bank statements at the time of the loans. I said that the bank statements might not have shown ASL everything it would've seen by carrying out proportionate checks. But the bank statements were the best indication of Mrs T's ability to afford the loans at the time they were approved. So I didn't think it was unreasonable to rely on these. But the bank statements I'd seen showed an overdrawn account with hardly any transactions. There was no income shown and the transactions were mostly transfers of small amounts between the current account and another account. So, I thought if ASL had done what I considered to be proportionate checks, it would have seen that Loans 5 and 6 weren't affordable.

But, from Loan 7 onwards, if ASL had done what I consider to be proportionate checks, I thought it would have become aware that Mrs T was gambling heavily. And to support this gambling expenditure she was also borrowing from a number of other short term lenders. In the month before Loan 7, her gambling transactions alone were over £2,000.

Having seen most of Mrs T's bank statements, it appeared (subject to an exception referred to below) that the borrowing and gambling pattern continued throughout the rest of Mrs T's loans with ASL. I said as an example, in April 2014, Mrs T's income was £2,242, and she'd spent around £3,950 on gambling. She'd also taken out a further £830 of new short term lending that month. I noted that Mrs T did receive some 'winnings' from gambling but this was at least £1,070 less than she spent at the time.

With regard to Mrs T's winnings as a result of her gambling, generally it appeared these winnings were far exceeded by what she'd spent on gambling. But, I noted that in mid-April 2016, Mrs T received an extremely large winnings amount. From the statements I'd seen, it seemed that she then used at least some of her winnings to spend large amounts on further gambling transactions. But, I hadn't seen the statement for the month before Loan 46 which was taken out in late June 2016. So, on balance, I thought it was possible that Mrs T may have had some winnings remaining at the time this loan was taken out, which might have made the loan seem affordable. But, as I hadn't seen the statement, I couldn't be sure what Mrs T's financial position was at the time. So, I wasn't able to say that ASL should do anything more about Loan 46.

I had seen the statement for the month before Loan 47, and Mrs T's regular heavy gambling and borrowing pattern had continued with her current account overdrawn on several occasions. So, I thought that if proportionate checks had been made before Loan 47, that ASL would have found that it wasn't affordable.

Otherwise, having looked at Mrs T's statements during the period the loans were taken out, I couldn't see that her financial circumstances had altered significantly during this time. And I thought the real extent of Mrs T's financial problems would have been clear to ASL if it had asked Mrs T to provide independent evidence of her financial situation. And that would have showed that she didn't have sufficient disposable income to repay the loans she was asking to take. It seemed as though Mrs T was caught in a cycle of borrowing and gambling.

So, overall, I thought ASL's lending to Mrs T from Loan 5 onwards (other than Loan 46) was irresponsible. To settle the complaint, I thought ASL should refund all the interest and charges it had applied to Mrs T's accounts for Loans 5 to 45 and 47 to 49, and pay 8% simple interest on those refunds from the date of payment to the date of settlement. Any adverse information recorded on Mrs T's credit file with regard to those loans should also be removed.

Subject to any further representations by Mrs T or ASL, my provisional decision was that I intended to uphold this complaint in part. I intended to order ASL to:

1. Refund any interest and charges applied to Loans 5 to 45 and Loans 47 to 49;
2. Add simple interest at a rate of 8% per annum to each of these refunded amounts from the date they were paid to the date of settlement\*; and
3. Remove any adverse information recorded on Mrs T's credit file in relation to the loans I am asking to be refunded.

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

Mrs T responded to say that she had no further comments to make and ASL hasn't provided a response to my provisional 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.

Given that the parties have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require ASL to take the actions set out below.

**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 any interest and charges applied to Loans 5 to 45 and Loans 47 to 49;
2. Add simple interest at a rate of 8% per annum to each of these refunded amounts from the date they were paid to the date of settlement\*; and
3. Remove any adverse information recorded on Mrs T's credit file in relation to the loans I am asking to be refunded.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs T to accept or reject my decision before 22 January 2018.

Roslyn Rawson  
**ombudsman**