

**complaint**

Mr C complains that Active Securities Limited, trading as 247 Moneybox, ("ASL"), gave him loans that were unaffordable and that it provided him with unsatisfactory customer service.

**background**

Mr C was given 24 loans by ASL between September 2015 and June 2017 as follows:

Number of Loan	Date of Loan	Loan Amount
1.	15/9/2015	£80
2.	2/10/2015	£150
3.	19/11/2015	£125
4.	25/11/2015	£225
5.	9/12/2015	£150
6.	13/1/2016	£125
7.	4/2/2016	£100
8.	9/3/2016	£300
9.	31/3/2016	£300
10.	3/5/2016	£200
11.	6/6/2016	£125
12.	20/6/2016	£100
13.	30/7/2016	£200
14.	31/8/2016	£200
15.	26/9/2016	£80
16.	6/10/2016	£125
17.	7/11/2016	£200
18.	5/12/2016	£235
19.	10/1/2017	£125
20.	18/1/2017	£100
21.	23/3/2017	£80
22.	9/5/2017	£80
23.	1/6/2017	£200
24.	30/6/2017	£200

Mr C has repaid all but the last loan. The loans were being taken almost every month, and often a few days after the previous loan was repaid. There is a balance outstanding on the last loan of £232. Mr C complained that ASL let him borrow month after month and often on the same day that he'd repaid his previous loan. He said that ASL kept him stuck in a vicious payday spiral. He said that he had a bad credit score, had overcommitted elsewhere and a serious gambling addiction. He didn't think that ASL had made proper credit checks. Mr C is seeking a refund of interest on the loans plus 8% statutory interest and he would like the loans removed from his credit file.

Mr C was also unhappy at the way ASL had dealt with his initial complaint and his failure to pay Loan 24. He said that he had sent ASL emails and phoned them without response. He had sent it a counter-offer on 27 July 2017 which it hadn't replied to. It agreed to a repayment plan in July 2017 and said that it would put his account on hold pending Mr C's initial complaint being resolved. But it then sent him a notice of default in September 2017 despite this. He was unhappy that ASL had offered to write off his balance in settlement of his complaint which he had rejected, and it had then demanded repayment of the whole balance.

ASL said that Mr C had provided information about his income and expenditure at application. It had calculated a "free cash flow" figure from this and built in a buffer for a margin of error. And it would only lend up to a maximum percentage of the free cash flow figure. Its loans were under this amount. ASL also said that Mr C had declared to it that he had no other short term credit. It also said that the credit score it assessed for Mr C exceeded its minimum threshold.

#### *our adjudicator's view*

The adjudicator noted that ASL had checked Mr C's income and expenditure and completed credit checks. But he couldn't see that income and expenditure details had been collected for the first four loans, and he hadn't seen any details of ASL's credit checks. As he hadn't seen details of the checks for the first four loans, he couldn't say that sufficient checks had been made. And he thought that further checks to verify Mr C's income and expenditure were needed for Loans 5 onwards.

The adjudicator had noted that Mr C's income was around £1,500 and as it appeared that his regular expenditure was less than £1,000, the adjudicator concluded that proportionate checks would have shown the first three loans were affordable. He also thought that ASL should have asked Mr C about his short term lending before Loan 4. And if it had, he thought that ASL would have seen that Loan 4 was unaffordable. And with regard to Loans 5 onwards, the adjudicator said that these were unaffordable due to Mr C's gambling and other short term lending. So he recommended that ASL should:

- Refund all interest and charges that Mr C paid on Loans 4 onwards;
- 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 the loans from Mr C's credit file.

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

ASL hasn't provided a response to the adjudicator's view.

Mr C responded to say that he agreed with what the adjudicator had said but he was also concerned how difficult ASL had been to deal with. He had started the initial complaint with ASL in July 2017. Mr C said that it ignored all his emails and calls and it tried to demand that he pay the outstanding balance after previously stating it would write it off.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr C and to ASL on 11 May 2018. I summarise my findings:

I noted that Mr C had said that he agreed with the adjudicator's findings, so it seemed that the first three loans weren't in dispute. So I said that I wouldn't be looking at those loans in this decision.

I noted that ASL was required to lend responsibly. It needed to make checks to see whether Mr C 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 C was borrowing, and his lending history, but there was no set list of checks ASL had to do.

I explained that the Financial Conduct Authority was the regulator at the time Mr C borrowed from ASL. I said that its regulations required 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 C's income, or that he was able to repay most of the loans, didn't necessarily mean the loans were affordable and that he was able to repay them in a sustainable manner. So, I couldn't assume that because Mr C was able to repay most of his 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 C, it had asked him about his income and expenditure. And it had carried out a credit check and was satisfied with Mr C's credit score which was over its minimum threshold. I'd not seen the results of ASL's credit check.

I noted that Mr C felt the credit check should have shown his bad credit score and his other credit commitments. But, I said that the information a consumer might see, when they request a copy of 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. So, this might explain any differences between the information provided by ASL's credit check and the information seen by Mr C in his credit report.

I had seen Mr C's credit report. I could see that the credit report showed that Mr C was borrowing from other lenders at the time he was asking for ASL's loans, but most of his loan accounts appeared to be well maintained. There were also no defaults or county court judgements on his credit report.

I noted that ASL hadn't supplied us with any details of Mr C's income and expenditure for Loan 4, so I didn't know if it had obtained these from him. But, by the time of Loan 4, I thought ASL should have started to become concerned about whether it knew enough about Mr C's true financial situation. So I thought it would have been proportionate for ASL to have also asked Mr C some more detailed questions at this point, such as whether he was borrowing from other short term lenders at the same time. I couldn't see that it did this.

Loan 5 was Mr C's fifth loan in less than three months. He'd applied for it two weeks after Loan 4, and Loan 4 had been repaid just two days previously. I thought by the time of Loan 5 that Mr C's overall borrowing from ASL was being taken sufficiently regularly to show that Mr C was reliant on it to get by. And I thought ASL should have been on notice that it was unlikely Mr C's financial position was as good as he was declaring. I noted that ASL thought that it should be able to rely on the declaration about other short term credit it had obtained from Mr C and his free cash flow figure. But whilst Mr C appeared to have a significant amount of disposable income each month, I thought ASL should have been concerned that Mr C needed to borrow very regularly. I thought Mr C's borrowing record had now reached the point where it would have been reasonable for ASL to question whether it could rely on the information Mr C had provided to it about his finances. So, I didn't think that reliance by ASL on Mr C's declared income and expenditure figures was a sufficient check. And I thought that ASL should have been concerned by then as to whether Mr C could sustainably afford the repayments on any further loans.

I also noted that ASL had said that it had asked Mr C for details of his monthly credit commitments. But I thought that this request could easily have been interpreted as only referring to regular monthly credit outgoings (such as credit card repayments). These were rather different to short term financial commitments (such as payday and instalment loans). I couldn't be sure that ASL had specifically asked for these details.

So, by the time Mr C applied for Loan 5, I thought ASL should have been looking to independently verify Mr C's income and expenditure so it could fairly assess the affordability of Loan 5. And as ASL from then on received repeated applications from Mr C, usually within a month of his previous loan being repaid, I thought that level of checks would have been appropriate for the rest of the loans that Mr C took from ASL. It could've done this in a number of ways. It could've asked for evidence of Mr C's income and expenditure such as payslips and bills or it could've looked at things like his bank statements. So, I agreed with the adjudicator that ASL's checks also weren't proportionate for Loans 5 onwards.

Although I didn't think the checks ASL did on Loans 4 onwards were sufficient, that in itself didn't mean that Mr C's complaint should succeed. I also needed to see whether what I considered to be proportionate checks would have shown ASL that Mr C couldn't sustainably afford the loans.

As I'd said above, for Loan 4, I thought that ASL should have gathered information about Mr C's income and expenditure and other short term borrowing. ASL hadn't provided us with any information about these. So I'd looked at Mr C's bank statements, and what he'd told us about his financial situation, to see what better checks would have shown ASL.

At the time of Loan 4, Mr C's finances were finely balanced. His income was around £1,529. His normal expenditure appeared to be around £890 and in the month before Loan 4, he'd taken out short term loans of around £310 which he would have needed to repay before taking out loans from ASL. After taking the repayment of Loan 4 into account, I didn't think that Mr C would have been left with enough money for unexpected costs. So, I agreed with the adjudicator that if ASL had done what I considered to be proportionate checks, that it would have found that Loan 4 wasn't sustainable.

And with regard to Loan 5 onwards, as I'd said above, I thought ASL should have been independently checking what Mr C was earning and spending each month. So I'd tried to do this by looking at Mr C's bank statements at the time of these loans, and what he'd told us about his financial situation, to see what better checks would have shown ASL. 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 Mr C's ability to afford the loans at the time they were approved. So I didn't think it was unreasonable to rely on these.

I'd checked Mr C's bank statement for the month before Loan 5. I could see that Mr C's income was around £1,529. But the bank statement didn't specifically refer to most of the normal expenditure that I'd expect to see such as rent or mortgage payments, council tax, water and utility bills. Mr C explained that he lived with family and paid a monthly amount of £350 for his keep, utilities, council tax and food. But, I could see on the statement that Mr C had a large number of regular financial commitments and also spent on insurance, bank charges and phone. And if ASL had done what I considered to be proportionate checks, I thought it would have also become aware that Mr C was gambling heavily. And to support this gambling expenditure he was also borrowing from a number of other short term lenders. In the month before Loan 5, his short term lending, which would have been repayable around the same time as ASL's loan repayments, was over £1,000. And his gambling transactions alone appeared to be over £3,000. So if ASL had done what I considered to be proportionate checks, I thought that it would have seen that the repayments for Loan 5 weren't sustainable as Mr C had no disposable income.

I'd also checked Mr C's bank statement for the month before Loan 6. Mr C's income was around £1,529 as he'd declared to ASL. And his regular expenditure appeared to be slightly more than his declared expenditure of £935. His short term lending had reduced to £150, and his gambling was around £640. So, again if ASL had done what I considered to be proportionate checks, I thought that it would have seen that Loan 6 wasn't sustainable as Mr C had no disposable income.

And having seen Mr C's bank statements for the months before Loans 7 onwards, it appeared that the borrowing and gambling pattern continued and it was clear that better checks would have shown ASL that Mr C had insufficient disposable income to repay these loans. As an example, in the month before Loan 10, Mr C's income was around £1,514, but he took out short term lending of around £500 and spent over £1,030 on gambling. And in the month before Loan 21, Mr C's gambling was over £800. But he also took out over £800 of new short term lending that month.

I noted that Mr C did receive some 'winnings' from gambling but these appeared to be significantly less than what he'd spent at the time.

So if ASL had done what I considered to be proportionate checks, I didn't think ASL would have thought the loan repayments for Loans 7 onwards were sustainable for Mr C as he had no disposable income and so it wouldn't have given him these loans.

In summary I didn't think ASL did enough checks for Loans 4 onwards. I thought proportionate checks would have shown ASL the state of Mr C's finances and that Mr C couldn't afford to sustainably repay Loans 4 onwards. So I didn't think ASL should have given Mr C these loans, and I thought it needed to pay Mr C some compensation relating to these loans. To settle this aspect of Mr C's complaint, I thought ASL should:

1. Refund all interest and charges that Mr C paid on Loans 4 to 23;
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 24, refund all the interest and charges that Mr C had paid on Loan 24, 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 24;
5. Apply the refunds referred to above to reduce any capital outstanding on Loan 24 and pay any balance to Mr C; and
6. Remove any adverse information about Loans 4 to 24 from Mr C's credit file.

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

Mr C had also complained about the way in which ASL had dealt with both his initial complaint and his failure to repay Loan 24. I noted that Mr C spoke to ASL on 19 July 2017 and it set up a repayment plan with him under which he agreed to repay £25 per month towards the balance outstanding on Loan 24. He then sent ASL a complaint on 21 July 2017 about all his loans. ASL responded on 27 July 2017. It said it would put his account on hold and offered to write off the Loan 24 balance in full in settlement of Mr C's complaint. Mr C rejected this offer. He emailed ASL on 27 July 2017 to make a counter offer. He is unhappy that he received no response from ASL to his counter offer and that ASL didn't take his monthly payments. And despite his account having been put on hold, Mr C is unhappy that ASL sent him on 8 September 2017 a notice of intention to file a default on his credit file if the full balance wasn't repaid. Mr C then emailed ASL about its notice and repeated his counter-offer on 12 September 2017, but he has received no response to that. Mr C also phoned ASL on 6 October 2017. He said that he was on hold for 45 minutes and when he spoke to ASL, it said it would forward his counter-offer to the relevant person. But he'd received no response to that. Mr C is unhappy that ASL didn't respond to his emails and phone calls.

I had asked the adjudicator to ask Mr C for details of the emails and calls that ASL didn't respond to and he referred only to the emails he'd sent this service with his complaint (all referred to above) and the call referred to above.

I had asked the adjudicator to ask ASL for further information about this aspect of Mr C's complaint. It provided no further information.

I could see that Mr C was unhappy with the way ASL had dealt with his complaint. But as complaint handling isn't a regulated activity, I'd said that we have no power to look at this. But from the evidence I'd seen, I thought ASL had made errors in its administration of Loan 24 and in view of Mr C's financial difficulties, I didn't think that it had dealt with him positively and sympathetically. It appeared that ASL didn't take Mr C's repayments after he'd set up a repayment plan. And ASL had also said that it would put Mr C's account on hold whilst it resolved Mr C's complaint. So, I didn't think it was then appropriate for ASL to send Mr C a notice of intention to apply a default if his account was meant to have been put on hold.

Because of ASL's errors in how it had administered Loan 24, by, for example, not suppressing the notice of intention to apply a default and by not taking payments following the setting up of a repayment plan, I said that Mr C had been caused distress and inconvenience. So, I thought ASL should pay Mr C compensation of £100 for this aspect of his complaint.

Subject to any further representations by Mr C or ASL my provisional decision was that I intended to uphold this complaint in part. I intended to order Active Securities Limited, trading as 247 Moneybox, to:

- 1 Refund all interest and charges that Mr C paid on Loans 4 to 23;
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 24, refund all the interest and charges that Mr C has paid on Loan 24, 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 24;
5. Apply the refunds referred to above to reduce any capital outstanding on Loan 24 and pay any balance to Mr C;
6. Remove any adverse information about Loans 4 to 24 from Mr C's credit file; and
7. Pay Mr C £100 compensation for distress and inconvenience.

ASL must pay the compensation within 28 days of the date on which we tell it Mr C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple\*.

\*HM Revenue & Customs requires ASL to take off tax from this interest. ASL must give Mr C 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 balance, it must do so after deducting the tax.

Mr C accepted my provisional decision and had no further information to add.

ASL hasn't provided any further information in 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 Mr C and ASL 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 pay Mr C some compensation as 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 all interest and charges that Mr C paid on Loans 4 to 23;
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 24, refund all the interest and charges that Mr C has paid on Loan 24, 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 24;
5. Apply the refunds referred to above to reduce any capital outstanding on Loan 24 and pay any balance to Mr C;
6. Remove any adverse information about Loans 4 to 24 from Mr C's credit file; and
7. Pay Mr C £100 compensation for distress and inconvenience.

ASL must pay the compensation within 28 days of the date on which we tell it Mr C accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at 8% a year simple\*.

\*HM Revenue & Customs requires ASL to take off tax from this interest. ASL must give Mr C 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 balance, it must do so after deducting the tax.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 July 2018.

Roslyn Rawson  
**ombudsman**