

## **complaint**

Mr R says that Active Securities Limited trading as 247Moneybox.com ("Moneybox") was irresponsible by lending to him. He continuously borrowed from one lender to pay another.

## **background**

I attach my provisional decision dated 20 August 2018, which forms part of this final decision and should be read in conjunction with it. In my provisional decision I explained why I intended to uphold Mr R's complaint in part. I invited both parties to provide any further comments they may have by 3 September 2018 before I reached a final decision.

Mr R has agreed with my provisional decision and has described it as representing his position '*clearly and accurately*'. Mr R has nothing further to add. I have not heard from Moneybox.

## **my findings**

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

I am content that Mr R has accepted my provisional decision. And as Moneybox has not provided any further arguments, I see no reason to alter the conclusions I reached in my provisional decision on 20 August 2018.

## **my final decision**

For the reasons set out above and in my provisional decision dated 20 August 2018, I uphold Mr R's complaint in part.

Active Securities Limited trading as 247Moneybox.com should redress Mr R in the way set out in that provisional decision which is attached and forms part of this final determination.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr R to accept or reject my decision on or before 12 October 2018.

Rachael Williams  
**ombudsman**

**Provisional decision dated 20 August 2018****complaint**

Mr R says that Active Securities Limited trading as 247Moneybox.com ("Moneybox") was irresponsible by lending to him. He continuously borrowed from one lender to pay another.

**background**

Mr R has said that it was irresponsible of Moneybox to lend to him.

He complained to Moneybox in June 2017 and its acknowledgment letter made a 'goodwill offer' to write off the final loan outstanding balance of about £208 and to remove adverse information from his credit file. Mr R did not accept this and brought the complaint to us.

From the information I have received from Mr R and Moneybox I have created a table of approved loans. The figures have been rounded up or down in order to avoid using pence, so this table is not to be used for the purposes of any redress figures. Some loans were repaid late or early which may explain the difference between the contractual amount due and the actual amount paid.

Our adjudicator's second opinion in May 2018 was that Moneybox should put things right in relation to Loans 3 to 17, and £250 for 'trouble and upset' ought to be paid to Mr R as well.

Loan number	Date approved	Principal amount	Repaid figure –rounded Contractual sum in brackets if different	Date repaid
1	17 July 2011	£80	£110	10 August 2011
2	15 August 2011	£150	£201	9 September 2011
3	9 September 2011	£225	£277 (£312)	26 September 2011
4	21 November 2011	£150	£175 (£189)	1 December 2011
5	20 December 2011	£300	£380	10 January 2012
6	10 January 2012	£300	£414	10 February 2012
7	17 February 2012	£405	£441 (£510)	25 February 2012
8	19 April 2012	£100	£125 (£133)	3 May 2012
9	18 May 2012	£200	£257	8 June 2012
10	11 June 2012	£200	£218 (£275)	15 June 2012
11	16 June 2012	£175	£256 (£232)	13 July 2012
12	13 August 2012	£80	£140	14 September 2012
13	16 September 2012	£155	£303 (£240)	15 November 2012
14	17 November 2012	£250	£361	14 December 2012
15	4 January 2013	£300	£490 (£404)	22 February 2013
16	6 March 2013	£80	£149	15 April 2013
17	16 April 2013	£300	Paid £200 (£408) Balance due £208	Due 15 May 2013 – part unpaid

## Provisional decision dated 20 August 2018

Mr R seems to have accepted this opinion. Moneybox took its time to consider and its three issues about which it disagreed are that:

1. Mr R had told it that his net pay after tax and other expenditures was £1,650 or £1,800 – meaning “*net pay minus essential/priority bills (e.g. mortgage or rent, council tax, utility bills etc)*” and
2. Mr R’s loans were approved before an OFT investigation in 2013 in which it was recommended that expenditure breakdown figures are obtained to build more transparency into applications; and
3. Moneybox refutes the concept of repeat borrowing and multiple borrowing as being harmful. It says that sometimes this can be useful to manage “*cyclical income shortfalls*”.

As the complaint remains unresolved then it’s been passed to me for a decision.

### my provisional findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I have taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Before lending money to a consumer a lender should take proportionate steps to understand whether the consumer will be able to repay what they’re borrowing in a sustainable manner without it adversely impacting on their financial situation.

A lender should gather enough information for it to be able to make an informed decision on the lending. Although the guidance and rules themselves didn’t set out compulsory checks, they did list a number of things a lender could take into account before agreeing to lend. The key thing was that any checks needed to be proportionate and had to take into account a number of different things, including how much was being lent and when the borrowed sum was due to be repaid.

Moneybox says it verified Mr R’s employer and job role. Moneybox says that it asked Mr R for what it has described as his net pay minus essential/priority bills, and it seems to refer to this as the “*free cash flow figure*”. Moneybox has said that for Mr R this figure was £1,650 and on another occasion it has said that for Mr R this figure was £1,800. I have seen no details of the application process which may substantiate this detail. Moneybox has explained that using this figure it would build in “*a buffer of 55% for a margin of error. This means that the consumer was lent a maximum of 45% of their free cash flow figure.*”

Moneybox has said that Mr R ‘declared’ he had no other high cost short term loans and that all information given to it was accurate. I have not seen any details of how this declaration was asked for or given by Mr R.

Moneybox has said that specific requests were directed to Mr R when he applied for Loan 14 in November 2012. On the original loan list from Moneybox with its original submissions to us this loan is referred to as “*his third loan*” but cross-referring with the amended loan list sent to us, I can see that in fact it was Loan 14. Our adjudicator thought the same and refers to it as loan 14. At this stage Moneybox has said that it asked Mr R this question:

*“Is there any further information that you might wish to bring to our attention at this time that you think may cause us to conclude it is inappropriate to enter into an agreement with you (for example, as a result of any health issues you may have, bankruptcy, levels of indebtedness including any other payday loans, entering an IVA?)”.*

Moneybox says that no other information was given to it by Mr R. I have not seen anything to substantiate that this was part of the application process for Loan 14 or what Mr R’s response was.

## Provisional decision dated 20 August 2018

Detailed credit searches were carried out from November 2012 and I have seen four sets of results from November 2012 onwards. And Moneybox says that Mr R's scorecard was more than its minimum threshold score of 219 "*on each occasion*". So there must have been some other credit searches which may have been carried out before November 2012 in order to be able to generate a score, or another method of generating the score. I have no details on what that was.

Mr R has been frank in his explanations and has said that the information he gave to Moneybox was "*not always 100% accurate*". He accepts that he had a gambling habit and he thinks that Moneybox "*fuelled the habit*" by lending to him irresponsibly.

Mr R has been detailed in the expenditure figures he has said he had around the time he was applying to Moneybox. I have copies of Mr R's bank account statements and I can see that most of what he has told us are represented on those statements or are bills which can be paid for in cash. So I think that what Mr R has presented to us has been reasonable and consistent.

In relation to the figures given to Moneybox, it has taken what it says was Mr R's figure of £1,650 or £1,800 as the '*free cash flow figure*'. So that leads me to think that it must have proceeded on the basis that Mr R's income was far more than this – enough that when all expenses are removed Mr R was left with this figure of £1,650 or £1,800. But as I have not seen anything to show me this was the basis on which it evaluated Mr R's applications then I have looked at the bank statements for Mr R.

I can see that it's more likely that Mr R's net income was about £1,800 – about £1,477 being his regular income and about £320 from a family member's rent.

### Loans 1 and 2

For Loans 1 and 2, I think that it would have been proportionate for Moneybox to have knowledge of Mr R's income. I think that it had that (at least) and so I think that it satisfied the proportionate checks test for Loans 1 and 2.

I am planning not to uphold Mr R's complaint in relation to loans 1 and 2.

### Loans 3 and 4

For Loans 3 and 4, I consider that the checks proportionate to the sums being asked for would have been for Moneybox to know of Mr R's income, his outgoings and regular living expenses including regular financial commitments.

As Moneybox has said that its free cash flow figure was what it was treating as Mr R's "*net pay minus essential/priority bills*" then it seems to be saying that it did carry out these proportionate checks. But I have not been given anything to substantiate this and so I have had to proceed with what I have seen on Mr R's statements and his expenditure testimony.

Mr R's mortgage and money to his partner for bills and food came to £749. He spent about another £220 a month on other bills for his car (tax and insurance), petrol, TV and telephone. This amounted to about £969. On top of this are regular loan and second mortgage repayments for £115 and £538 which came to £653.

All of these expenditure items added up to about £1,622. This means that using these figures Mr R would have been left with about £178 and so Loans 3 and 4 are not likely to have been considered affordable.

If Moneybox is able to demonstrate to me that its figures on which it relied were different to a net income of about £1,800 – so details about the free cash flow figure – then I may reconsider my position on these two loans. Currently I am planning to uphold Mr R's complaint in relation to Loans 3 and 4.

## Provisional decision dated 20 August 2018

### Loan 5 onwards

In December 2011 Mr R had been borrowing for several months and asked for a larger sum: £300 with a repayment figure of £380. So at this stage I consider that Moneybox ought to have carried out a full review of Mr R's financial situation. By this I mean that Moneybox needed to have verified his income, expenditure, regular and short term financial commitments and in general gain a comprehensive picture. I do not think that Moneybox did this and so I have reviewed Mr R's bank statements to see what it would have found out.

I can see that Mr R was taking many other short term loans every month. In view of my findings in relation to his outgoings, then the combination of these plus his large and regular liability to other short term lenders leads me to think that Mr R was not in a position to repay these loans without undue difficulty.

And on top of this I can see that Mr R was spending a great deal each month on betting and gaming transactions. Sometimes this may have resulted in some credits from those same companies. But if Moneybox had carried out the proportionate checks I think it needed to have done then it would have likely seen these. And I consider that making lending decisions on whether Mr R may win at gambling would not be considered responsible.

I say this with reference to the wording of the affordability assessment guide by the OFT which was applicable at the time Moneybox was lending to Mr R. The checks were to be proportionate to a number of factors, including Mr R's *current* financial situation and indications of *present or past* financial difficulties, as well as *future* financial commitments.

My view is that it would not be unreasonable to consider that many hundreds and possibly thousands of pounds being spent on gambling would be a '*current financial situation*' to be taken into account. And it's likely that this could be a fairly strong indication of present financial difficulty.

In addition, it is likely to mean that Mr R may have had an issue with repaying in a 'sustainable' fashion within the meaning of the OFT guidance.

In light of all of what I have said above and as I can see that the amounts applied for increased as well as the frequency, then I think that Moneybox should have carried out a full review on each loan going forward from Loan 5.

For instance, Loans 9, 10 and 11 were applied for within a month (18 May to 16 June 2012) and that made a total application amount of £575 making a total sums to be repaid of over £750.

When Moneybox says it started to carryout detail credit searches, and having looked at those results, I can see that Moneybox had information to show that Mr R's credit situation was very poor. And I do not consider it to have been the actions of a responsible lender to extend additional credit to Mr R.

So I am planning to uphold each of the loans from 5 to 17 inclusive.

And to answer each of Moneybox's points in turn:

1. I have not been given anything to show me that this is the information Mr R had given it; and
2. in relation to the transparency point, Moneybox itself seems to be saying it's not applicable to Mr R's situation and so a neutral point; and
3. my provisional findings demonstrate that Mr R was not able to afford these loans just on his actual income and actual expenditure figures. In addition Mr R had heavy STL liability and had heavy gambling activity. I have not made reference to repeat borrowing to come to the provisional findings I have come to.

**Provisional decision dated 20 August 2018**

Moneybox has raised no objection to the £250 'trouble and upset' award and so I make no findings in relation to that as it appears not to be in dispute.

**putting things right**

Because I am planning to decide that Moneybox should not have given Mr R some of the loans, it's not right that Mr R should have to pay interest or charges on these, or have them affect his credit file in a negative way.

I am planning to direct that Moneybox should do as follows:

- refund any interest and charges already paid by Mr R in respect Loans 3 to 17 inclusive; and
- apply 8% simple interest per year to any interest and charges refunded from the date they were paid to the date of settlement\*;
- remove any adverse payment information about the loans and credit account from Mr R's credit file
- pay distress and inconvenience payment of £250 to Mr R.

Moneybox is entitled to set off any of the monies arising from the redress against any monies Mr R may owe it.

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

***the provisional decision duplicate ends here.***