

The complaint

Mr K's complaint is about loans he took with Morses Club PLC. He says these loans were unaffordable for him.

What happened

Morses provided Mr K with six home collected credit loans between December 2016 and January 2019. The amounts borrowed ranged between £300 and £1,000 and were due to be repaid weekly. At the time of writing this decision loans 5 and 6 were outstanding.

Our adjudicator thought Morses shouldn't have provided loans 5 and 6 as it looked like Mr K was struggling to manage his finances. So, they partially upheld Mr K's complaint.

Morses accepted our adjudicator's view and said that after it had applied the redress there was still an outstanding balance. But Mr K disagreed and said he wanted the outstanding balances to be written off.

As the complaint couldn't be resolved informally, it has been passed to me for a final decision.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

We've set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Morses needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr K could repay the loans in a sustainable manner. These checks could consider several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. In the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Morses should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer's income (reflecting that it could be more difficult to make any loan repayments to a given loan amount from a lower level of income);
- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated

refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Moses was required to establish whether Mr K could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course, the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr K's complaint. Our adjudicator didn't uphold Mr K's complaint about loans 1 to 4. As Mr K hasn't queried the adjudicator's findings on these loans, I won't be making any further findings on them.

Moses agreed with our adjudicator's findings that loans 5 and 6 shouldn't have been lent. Looking at what the adjudicator said, I agree with their rationale for why these loans weren't suitable for Mr K. So, the matter that is left for me to consider is whether the redress offered is fair and reasonable given the circumstances of Mr K's complaint.

It seems that Mr K hasn't made any repayments towards loans 5 and 6 so this means the total amount of principal outstanding is £1,142.49. Mr K has said he doesn't think he should have to repay this. I can appreciate why Mr K feels as if he shouldn't repay the principal sum, but that isn't the position this service takes. I've explained below how we look into these types of cases.

When a business has made an error – either because it accepts one has been made or we decide something has gone wrong – the starting point, for this service, is that a consumer should be put back into the position they would have been in had an error not been made. However, this is not always possible especially in cases that involve lending money.

In cases of irresponsible lending, such as this, this service has to acknowledge that the consumer has received a sum of money and has had the benefit of it. This is why in such cases we ask the lender to refund any extra that has been repaid by a consumer, so for example interest and charges. We also direct any additional interest payment to the consumer to reflect the loss of use of those funds. This has the effect of providing the consumer with an interest free loan. By doing this, in our view, a fair outcome is reached.

I've thought about what Mr K has told us and I do have sympathy for his position. I can understand why he wants the outstanding balance written off, and his liability for the lending to be ended. Mr K has had use of the funds and I don't think it would be fair in this case, to ask Moses to write off this balance. Mr K, as I've said, has used these funds and I think Moses is entitled to recover what was lent – which is what it is proposing to do. I'm sorry to hear about Mr K's financial difficulties and I appreciate that my findings are likely to disappoint him. But I hope my explanation will help him understand why I've reached this conclusion.

Putting things right

In deciding what redress Moses should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr K from loan 5, as I'm satisfied it ought to have.

Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr K may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. If this wasn't a viable option, they may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if they had done that, the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr K in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr K would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Moses' liability in this case for what I'm satisfied it has done wrong and should put right.

As a reminder this is what Moses has agreed to do with regards to loans 5 and 6;

If Moses has sold the outstanding debts, Moses should buy these back if it is able to do so and then take the following steps. If Moses can't buy the debts back, then Moses should liaise with the new debt owner to achieve the results outlined below.

A) Moses should add together the total of the repayments made by Mr K towards interest, fees and charges on loans 5 and 6, not including anything Moses has already refunded.

B) Moses should calculate 8% simple interest[†] on the individual payments made by Mr K which were considered as part of "A", calculated from the date Mr K originally made the payments, to the date the complaint is settled.

C) Moses should remove all interest, fees and charges from the balance on loans 5 and 6, and treat any repayments made by Mr K as though they had been repayments of the principal on these loans. If this results in Mr K having made overpayments then Moses should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Moses should then refund the amounts calculated in "A" and "B" and move to step "E".

D) If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on the outstanding loans. If this results in a surplus, then the surplus should be paid to Mr K. However, if there is still an outstanding balance then Moses should try to agree an affordable repayment plan with Mr K. Moses shouldn't pursue outstanding balances made up of principal Moses has already written-off.

E) Moses should remove any adverse information recorded on Mr K's credit file in relation to loans 5 and 6.

† HM Revenue & Customs requires Morses Club PLC to take off tax from this interest. Morses Club PLC must give Mr K a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons explained above, I think what Morses Club PLC has already agreed to do to put things right for Mr K is fair and reasonable in the circumstances of the complaint and I don't ask it to do any more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 16 February 2021.

Claire Marchant-Williams
Ombudsman