

The complaint

Mrs L complains that Morses Club PLC lent to her irresponsibly. She is represented by a third party.

What happened

Morses' records have given us the details of the approved loans and this loan table summarises them briefly. Loan 4 was passed over to an external debt collector.

Loan	Date	Principal	Repayments (weekly)	Settled
1	09.03.17	£100	£150 (20 x £7.50)	13.06.17
2	13.06.17	£200	£330 (33 x £10)	28.11.17
3	28.11.17	£400	£660 (33 x £20)	06.12.18
4	06.12.18	£400	£660 (33 x £20)	13.12.19 with debt collector £475

One of our adjudicators looked at Mrs L's complaint and thought that Morses should put things right for her in relation to Loan 4.

Morses agreed and said that Mrs L "...currently has an outstanding balance of £475 and hasn't made any repayments towards the interest balance. We will therefore remove the interest balance of £260 and leave the capital balance owing to [third party debt collector] of £215.00,..."

Morses went on to suggest that if Mrs L wishes to repay the outstanding balance in instalments that she contacts the third party debt collector to arrange that.

Mrs L, through her representative, said that she did not agree and said that she wants the "...offer to paid to me and my loan written off that's what I would accept."

The complaint remains unresolved and was passed to me for a 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 have 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 did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mrs L could repay the loans in a sustainable manner.

These checks could include 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 Moses should fairly and reasonably have done more to establish that any lending was sustainable for the consumer.

These factors include:

- Mrs L having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- Mrs L having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- Mrs L coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

Moses was required to establish whether Mrs L could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

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 Consumer Credit Sourcebook ("CONC") defines 'sustainable' as being the ability to repay without undue difficulties. The customer should be able to make repayments on time, while meeting other reasonable commitments, and 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 will not be able to make their repayments sustainably if they need to borrow further in order to do that. I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Mrs L's complaint.

Our adjudicator's letter of opinion said that she did not think that Moses had done anything wrong for loans 1 to 3. Mrs L has not disagreed with that. But for the avoidance of doubt, I think it's appropriate that in relation to loans 1 - 3, Moses relied on the information Mrs L gave it which suggested she could afford the repayments. I don't think there was any need at this early stage of her borrowing for Moses to have verified the information given to them. The checks it carried out were proportionate.

In relation to Loan 4, Moses has agreed with our adjudicator's view and has explained the current status of the loan. I set that out in the 'what happened' section of this decision at the beginning. So as this loan is undisputed, I have no need to address the details and merits of the complaint relating to it. Moses has agreed to uphold the loan 4 part of Mrs L's complaint.

Mrs L seems to be unclear about the semantics of how this successful part of her complaint plays out when there is an outstanding balance. Mrs L is represented by a professional claims management company and I think it could have explained this to her.

I have seen the repayment records for that last loan which may be out of date. Using the records I have available to me, Mrs L has repaid £185 of the £400 loan.

Mrs L has indicated that she'd only accept that her balance is written off. I do not agree.

Mrs L has had the benefit of that £400 principal sum lent to her and so its right that she repays that sum to Moses. Having already repaid some of it then its fair and reasonable for Moses to expect to receive the balance, currently calculated as £215. That balance may have altered if she has been making payments to the third party in the meantime.

Because our adjudicator upheld Mrs L's complaint about loan 4 then Moses has agreed to remove all unpaid – usually chargeable – interest, leaving Mrs L to repay just the principal sum balance. And as I have said earlier, that's correct and I agree with it.

Mrs L cannot expect to receive a refund of amounts she has not paid. So, the unpaid interest has been removed from the account for loan 4 and effectively means that Mrs L has had the £400 of loan 4 interest free.

Moses has explained that the outstanding sum is with a third party debt collector. It is a little unclear whether the third party owns the debt or Moses has delegated the collection of the outstanding part to it. This uncertainty is reflected in the redress 'putting things right' section below: some paragraphs may not apply to Mrs L but have been included to cover the situation where a third party owns the debt.

Moses has said it will update that third party debt collector to know what to collect from Mrs L.

If Mrs L is going to struggle to repay the amount left to repay then I remind Moses to instruct that third party to treat Mrs L in a positive and sympathetic manner if she approaches it about that debt.

The complaint is upheld in part (loan 4).

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 Mrs L from loan 4, 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 Mrs L 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 Mrs L in a compliant way at this time.

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

Morses shouldn't have approved loan 4 for Mrs L.

If it has sold the outstanding debt Morses should buy it back if it's able to do so and then take the following steps. If Morses is not able to buy the debt back – or if the debt is still owned by Morses but the agent is the debt collection agent - then it should liaise with the new debt owner/collection agent to achieve the results outlined below.

As I have said earlier, some of these paragraphs may not apply to Mrs L's situation but have been included to cover eventualities.

- A) Morses should add together the total of the repayments made by Mrs L towards interest, fees and charges on all upheld loans *without* an outstanding balance, not including anything Morses has already refunded.
- B) Morses should calculate 8% simple interest* on the individual payments made by Mrs L which were considered as part of "A", calculated from the date she originally made the payments, to the date the complaint is settled.
- C) Morses should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mrs L as though they had been repayments of the principal on all outstanding loans.

If this results in Mrs L having made overpayments then Morses 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.

Morses 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 outstanding loans. If this results in a surplus then the surplus should be paid to Mrs L.

However, if there is still an outstanding balance then Morses should try to agree an affordable repayment plan with her.

Morses shouldn't pursue outstanding balances made up of principal Morses has already written-off.

- E) The overall pattern of Mrs L's borrowing for loan 4 means any information recorded about it is adverse, so Morses should remove it entirely from Mrs L's credit file.

Morses does not have to remove loan 4 from Mrs L's credit file until it has been repaid, but Morses should still remove any adverse information recorded about it.

*HMRC requires Morses to take off tax from this interest. If Mrs L asks Morses for a certificate showing how much tax it's taken off, Morses should provide this.

If Morses intends to use the refund to reduce an amount Mrs L owes, it must do this after tax.

Morses cannot carry out a set-off unless it owns the debt.

My final decision

My final decision is that Mrs L's complaint is upheld in part and Morses Club PLC should do as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs L to accept or reject my decision before 11 June 2021.

Rachael Williams
Ombudsman