

The complaint

Ms W complains that Morses Club PLC was irresponsible in its lending to her.

What happened

Morses Club provided Ms W with five loans between November 2015 and September 2016.

Loan	Amount	Date	Repaid
1	£200	Nov-15	Mar-16
2	£200	Feb-16	Aug-16
3	£300	Mar-16	Sep-16
4	£300	Aug-16	debt sold
5	£300	Sep-16	debt sold

Ms W says that Morses Club didn't carry out adequate checks before lending and had it done so the loans wouldn't have been provided. She says the loans have resulted in her being depressed and unable to sleep.

Morses Club explained its approach to lending. It said that affordability assessments were undertaken before each loan with its agent visiting Ms W's home and going through her income and expenses.

Our adjudicator didn't think there was enough to say that the loans shouldn't have been provided. She considered the loan amounts, what was apparent about Ms W's circumstances at the time and her history with the lender and didn't think it would've been proportionate to require Morses Club to ask Ms W for the amount of information needed to show the lending was unsustainable. For the later loans, our adjudicator did think Morses Club should've taken steps to build a more detailed picture of Ms W's financial situation. But said she haven't seen anything in the information provided which suggested had this happened Morses Club would have realised the loans were unsustainable.

Ms W didn't accept our adjudicator's view. She said the loans caused her severe hardship resulting in her becoming depressed and needing medication. She said Morses Club knew that she couldn't afford the loans and contacted her about taking out a new loan as soon as she repaid a previous loan.

My provisional conclusions

I issued a provisional decision on this complaint. I concluded in summary:

- The checks carried out before the first loan was provided were proportionate and as these suggested the loan was affordable I didn't find I could say this loan shouldn't have been provided.

- The second loan was taken out while the first was still outstanding. I thought the checks carried out before this loan was provided were proportionate and having considered the combined repayment amounts on loans 1 and 2 I found this loan appeared affordable.
- Ms W took out a third loan less than a month after the second loan had been taken out and on the same day that the first loan was repaid. This loan was for a higher amount, £300 with a finance charge of £195. While I thought it too early in the relationship to say that a pattern of borrowing had emerged which showed further lending would be unsustainable I thought the timing of these first three loans meant that further checks should have been carried out at this stage.
- The combined repayments Ms W was required to make for loans 2 and 3 were £25 a week. I considered the information in Ms W's application and the credit search that was carried out. While there was some adverse information recorded on Ms W's credit report I didn't think this, or the other information gathered, was enough to say that this loan shouldn't have been provided.
- As with loan 3, I thought further checks should have been carried out before loan 4 was provided. However, I didn't find I had enough evidence to say that had further checks taken place Morse Club would have realised the loan wasn't sustainably affordable.
- Ms W then took out a fifth loan in September 2016 on the same day she repaid loan 3 and while loan 4 was still outstanding. Her credit report showed a county court judgement was recorded against her in July 2016. I think that based on this and the other information Morses Club had about Ms W's borrowing, Morses Club should have realised that Ms W was struggling to repay her debts and that lending to her at this time wasn't sustainable. Therefore, I upheld Ms W's complaint in regard to loan 5.

Ms W responded to my provisional decision saying that Morses Club completed the forms on her behalf and included income that shouldn't have been included.

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.

As I set out in my provisional decision, Morses Club 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 that Ms W could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent the repayment amounts and the consumer's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

I think that it is important for me to start by saying that Morses Club was required to establish whether Ms W could sustainably repay her 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 Consumer Credit Sourcebook ("CONC"), defines sustainable

as being without undue difficulties and in particular 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 have considered Ms W's comments in response to my provisional decision. While she has said that the forms were completed for her, Ms W signed the forms and I have nothing to suggest she wasn't aware of the information they contained. I can see a reference which could relate to a disability living allowance, however even taking this into account, I do not find I have enough to say that the first four loans shouldn't have been provided.

I think that by the time of loan 5, further checks would have shown Ms W was struggling to manage her money and I think it unlikely Ms W would be able to sustainably repay this loan. Therefore, as I set out in my provisional decision, I uphold this complaint in regard to loan 5.

Putting things right

In deciding what redress Morses Club should fairly pay in this case I've thought about what might have happened had it not provided loan 5 to Ms W.

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

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

Or, she 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 she 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 Ms W 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 Ms W would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Morses Club's liability in this case for what I'm satisfied it has done wrong and should put right.

In the event that loan 5 has been sold to a third party, Morses Club should take back the loan and take the actions set out below. If Morses Club is not able or willing to do this it should ensure the new owner of the debt takes the actions set out below.

- If there is still a balance outstanding on loan 5, all interest and charges on this loan should be waived and all payments made should be treated as though they were payments of capital such that Ms W only repays the capital amount borrowed. If this results in overpayments then these should be refunded to Ms W along with 8% simple interest calculated from the date of the over payment to the date of settlement*.
- Any adverse information regarding loan 5 should be removed from Ms W's credit file.

*HM Revenue & Customs requires Morses Club to take off tax from this interest. Morses Club must give Ms W a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold this complaint regarding loan 5. Morses Club PLC should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 12 August 2021.

Jane Archer
Ombudsman