

The complaint

Mr W (through a representative) has complained that Morses Club PLC (Morses) gave him unaffordable loans.

What happened

Mr W took five loans from Morses between August 2014 and December 2016. A summary of his borrowing, based on the information provided to us from Morses can be found below:

Loan number	Date taken	Date repaid	Loan amount
1	16/08/2014	05/02/2015	£100.00
2	04/12/2014	24/06/2015	£200.00
3	05/02/2015	22/01/2016	£200.00
4	24/06/2015	23/12/2016	£200.00
5	23/12/2016	06/07/2018	£200.00

These loans were due to be repaid over term of either 33 or 34 weeks.

The adjudicator didn't think Mr W's complaint about loans 1 and 2 should be upheld. But the adjudicator did uphold the complaint about loans 3 to 5 because by loan 3, Mr W was committed to spending a significant portion of his declared income servicing his loans with Morses.

It appears that Mr W agreed with our adjudicator's opinion.

Morses agreed with the adjudicator about loans 4 and 5 and it offered to settle the complaint in line with the adjudicator's recommendation. However, it didn't agree that loan 3 should be upheld. In summary it said;

- loan 3 looked affordable based on what Mr W declared for is income and expenditure
- Mr W repaid loans 1 and 2 without any problems and so there was no indication loan 3 would be unsustainable for him
- when loan 3 was granted, Morses took into account that loan 2 was outstanding; and
- in Morses view, less than 15% of Mr W's declared income going towards a repayment is not significant.

As no agreement could be reached the complaint has been 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.

I've also taken into account the law, any relevant regulatory rules and good industry practice at the time these loans were provided.

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 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.

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 Mr W. 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 Morses was required to establish whether Mr W 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 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 do so without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr W's complaint.

Loans 1 and 2

The adjudicator didn't uphold Mr W's complaint about these loans, and Mr W doesn't appear to disagree with the outcome. So, I won't comment further on these loans, or the level of individual checks Morses completed before approving them, as I don't think there is an ongoing dispute about them.

Loans 4 and 5

Morses has already accepted something went wrong when these loans were approved, because it has agreed to settle them in line with the adjudicator's recommendation. So, like loans 1 and 2, I no longer think there is an ongoing dispute about them. So, I won't be making a finding about this lending. But I have included these loans in what Morses needs to do to put things right.

Loan 3

The adjudicator upheld Mr W's complaint about these loans, because in his view, Mr W was committed to paying Morses a significant portion of his declared income and that led to the loan being unsustainable for Mr W. Taking into account the individual circumstances of the case, I agree with the adjudicator and I've explained why below.

Mr W's third loan was taken on the same day that loan 1 was repaid, and with the overlapping payments for loan 2, Mr W was committed to paying £20 per week, compared to £15 a week when Mr W had loans 1 and 2 outstanding. So, Mr W's indebtedness and weekly commitments had increased.

Added to this, when loan 3 was approved, Mr W declared a drop in his weekly income compared to loan 2. It had fallen from around £180 per week to £150 per week. I think this is a significant decrease. And his weekly expenditure had only slightly decreased from £80 at loan 2 to £75 at loan 3. For loan 3, Morses was aware, based on what Mr W declared, that his income was being squeezed, he wasn't earning as much, but his outgoings hadn't decreased in line with the income. So, Mr W had less money to pay for basically the same outgoings. While committing to take on a further loan for 34 weeks.

Morses says, that when it asked about Mr W's expenditure this included the payment of £10 per week that he needed to pay Morses for loan 2. However, the application form doesn't suggest that is the case. Whereas later application forms have a specific section to note down other loan repayments.

Even if I accept that Morses factored the repayment of loan 2 into its affordability assessment for loan 3, which did show that Mr W was able to afford this loan, I still don't think Morses ought to have granted this loan.

In my view, given what Mores knew about Mr W there was a significant risk that he wasn't going to be able to fully meet his existing commitments without having to borrow again. Which has led me to conclude that Mr W wouldn't be able to sustainably make his weekly repayments for this loan.

So, looking at what has happened, I'm upholding Mr W's complaint about this loan as well. I've outlined below what Morses has to do to put things right, on top of what it has already agreed.

Putting things right

In deciding what redress Morses should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr W from loan 3, 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 W 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 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 Mr W would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Morses's liability in this case for what I'm satisfied it has done wrong and should put right.

Morses should:

- refund all interest and charges Mr W paid on loans 3 to 5;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement*; and
- remove any negative information about loans 3 to 5 from Mr W's credit file.

*HM Revenue & Customs requires Morses to take off tax from this interest. Morses must give Mr W a certificate showing how much tax it has taken off if he asks for one

My final decision

For the reasons I've explained above, I'm upholding Mr W's complaint in part.

Morses Club PLC should put things right for Mr W as I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 1 November 2021.

Robert Walker
Ombudsman