

The complaint

Ms J says Moses Club PLC lent to her irresponsibly. She says that she had a significant amount of other debt and this led to it being problematic to make the loan repayments. She says that Moses should have made better checks and it would've seen this and not let to her.

What happened

This complaint is about five home collected loans Moses provided to Ms J. This lending started sometime before July 2013 and the last loan was approved in November 2015. Moses has said that its records show that loan 1 may have been sold by another business. It may have been aware of this loan when it sold loan 2 as it subsequently took over this business but it isn't responsible for the sale of it. In any event both sides don't have details about this loan, so I haven't fully considered it.

loan	start date	amount borrowed	term (weeks)	end date
1	no details provided			
2	05/07/13	£650	50	27/11/14
3	27/11/14	£400	50	26/11/15
4	03/07/15	£200	34	30/08/16
5	18/11/15	£400	52	30/08/16

The information Moses has provided shows that these loans 4 and 5 were passed to a third-party collection agency. I don't have full details about this, but I've assumed these loans weren't fully repaid.

Our adjudicator partially upheld the complaint. He didn't think Moses was acting incorrectly when it approved loans 1 to 3. But he thought that Ms J was showing signs of reliance on this type of credit by loan 4, and so it shouldn't have approved loans 4 and 5.

Moses agreed in part with the adjudicator's opinion. It agreed with what the adjudicator said about loan 5 and offered to pay compensation on this basis. But it didn't think that it irresponsibly lent loan 4. It didn't think that three loans in the two years prior to this was excessive, and it thought the lending was affordable.

Our adjudicator considered what Moses had said but didn't change his opinion about the complaint. As no agreement has been reached the complaint has been passed to me.

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 irresponsible lending - including all of 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 Ms J 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 the consumer. These factors include:

- the *lower* a customer'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.

And the loan payments being affordable on a strict pounds and pence calculation might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. The industry regulator 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've decided to uphold Ms J's complaint in part and have explained why below.

Ms J didn't disagree with our adjudicator's opinion about loans 1 to 3. Because of this I don't think there is any ongoing disagreement about these loans. So, I won't look at them in detail. But they were part of the borrowing relationship Ms J had with Morses. So, they are something I will take into account when considering the other loans she took.

And Morses now agrees that loan 5 shouldn't have been approved. I also don't disagree with this outcome and so I also won't look at this loan in detail. But I've included the compensation in my putting things right section below.

I haven't recreated individual, proportionate affordability checks for loan 4 because I don't think that it is necessary to do so. I've looked at the overall pattern of Morses' lending history with Ms J, with a view to seeing if there was a point at which Morses should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Morses should have realised that it shouldn't have provided any further loans. Given the particular circumstances of Ms J's case, I think that this point was reached by loan 4. I say this because:

- At this point Morse ought to have realised Ms J was not managing to repay her loans sustainably. Ms J had already been indebted to Morse for two years. And Morse may've been aware of some lending before this. So Morse ought to have realised it was more likely than not Ms J's indebtedness was unsustainable.
- Loan two was for £650. Loan 4 was for £400, and this is a lower amount. But loan 3 was still outstanding so the amounts Ms J was borrowing hadn't really decreased. And her monthly repayments had actually increased. So, Morse ought to have known that Ms J was not likely borrowing to meet an ongoing need.
- Right from the start Ms J was provided with a new loan a very short time after settling a previous one. And at times she more than one loan running at once. There wasn't a significant time when she wasn't making repayments to Morse.
- Ms J wasn't making any real inroads to the amount she owed Morse. Ms J had paid large amounts of interest to, in effect, service a debt to Morse over an extended period.

I think that Ms J lost out because Morse continued to provide borrowing from loan 4 onwards because:

- These loans had the effect of unfairly prolonging Ms J's indebtedness by allowing her to take expensive credit over an extended period of time.
- The length of time over which Ms J borrowed was likely to have had negative implications on her ability to access mainstream credit and so kept her in the market for these high-cost loans.

So, I'm upholding the complaint about loans 4 and 5 and Morse should put things right.

Putting things right

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

Morse shouldn't have given Ms J loans 4 and 5.

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

A) Morses should add together the total of the repayments made by Ms J towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.

B) Morses should calculate 8% simple interest* on the individual payments made by Ms J which were considered as part of "A", calculated from the date Ms J 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 Ms J as though her had been repayments of the principal on all outstanding loans. If this results in Ms J 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 Ms J. However, if there is still an outstanding balance then Morses should try to agree an affordable repayment plan with Ms J. Morses shouldn't pursue outstanding balances made up of principal Morses has already written-off.

E) The overall pattern of Ms J's borrowing for loans 4 to 5 means any information recorded about them is adverse, so it should remove these loans entirely from Ms J's credit file. Morses does not have to remove these loans from Ms J's credit file until these have been repaid, but Morses should still remove any adverse information recorded about these loans.

*HM Revenue & Customs requires Morses to deduct tax from this interest. Morses should give Ms J a certificate showing how much tax Morses has deducted, if her ask for one.

My final decision

For the reasons I've explained, I uphold Ms J's complaint. Morses Club PLC should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms J to accept or reject my decision before 10 November 2021.

Andy Burlinson
Ombudsman