

## The complaint

Mr D, through his representative, complains that Morses Club PLC lent to him when it had not carried out enough checks on his financial situation before lending.

## What happened

Morses has provided us with information on some loans. The brief table below is taken from its records and it referred to them as loans 2 to 4. It said it had no information about loans issued more than six years before Mr D complained to it.

Mr D was asked if he had any information about any loans before the Morses labelled 'loan 2'. He said he did not and this Service was to proceed with the information we had.

Loan	Start Date	End Date	Capital Amount	Interest amount	Term	Repayment amount	Weeks Live
2	14/01/2016	07/07/2016	£300.00	£195.00	33	£15.00	25
3	07/07/2016	06/12/2016	£400.00	£260.00	33	£20.00	22
4	06/12/2016	18/04/2018	£600.00	£390.00	33	£30.00	71

Morses in its final response letter to Mr D, said that *'Your application history shows you declared you had an average income of £263.50, expenditure of £193.00 and a disposable income of £73.50, which was more than adequate to meet your repayments.'*

Mr D referred his complaint to this Service. Morses sent us some information. One of our adjudicators looked at the complaint and he did not think that Morses needed to put things right for Mr D. He thought that for these loans Morses had carried out proportionate checks.

Mr D disagreed and has sent to us a copy of his credit file which covered the period of lending. He says that Morses never checked his financial expenditure and whether he could afford the loans.

I issued a provisional decision on 27 October 2021 in which I thought that the complaint about loan 4 should be upheld. I gave both parties time to respond. That date has passed and so I've issued my final decision. The provisional decision findings are duplicated (in smaller type-face to differentiate) in the next section.

The complaint remained unresolved and was passed to me to decide.

## 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 Mr D 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 Morses should fairly and reasonably have done more to establish that any lending was sustainable for the consumer.

These factors include:

- 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 level of income);
- having many 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);
- coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable, but I don't think that this was the situation with Mr D in these circumstances.

Morses was required to establish whether Mr D could sustainably repay his 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.

## ***My provisional findings dated 27 October 2021***

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

As Morses has listed these loans as being the second, third and fourth in its lending relationship with Mr D then I have considered that as part of my review of the complaint. And I will refer to them as 'loans 2, 3 and 4' in order to dovetail with the loan table provided by Morses.

### Loan 1

We have no information about loan 1 and Mr D has given a clear indication he is content for us to proceed on what we have. So, I make no findings about it.

### Loans 2 and 3.

Morses has provided us with a spreadsheet which it calls its '*front sheet*' and it contains no information at all about loans 2 and 3 except what appears in the loan table earlier in this provisional decision. But in its FRL it does refer to there being an average weekly income figure of around £263 and an average expenditure figure of £193. This suggests that it *does* have some information about the income and expenditure figures Mr D told to it for loans 2 and 3, in order to be able to work out the average figures. As this is a provisional decision then Morses has time to send me the details of the income and expenditure records for loans 2 and 3.

I do think that Mr D likely gave to Morses very similar figures to those which he gave for loan 4 and so proceeding on that basis then those would have been around £250 income a week and around £184 on expenses made up of rent £78, utilities £41 and groceries £65.

But I have got copies of Mr D's bank account statements and so I have reviewed those to see what his income and expenditure figures were around the times he took loans 2 and 3.

One set of bank statements are for an account and relate to dates which post-date these loans and so are irrelevant to this complaint.

Another set of bank statements relate to an account which looks to have been used like a savings account. There are very few entries each year and I have seen that from February to April 2016 Mr D did have some credit in there but not much. It was used up by April 2016.

The third set of bank statements I have do seem to be Mr D's main account. I can see that his salary was paid into it and there were transactions and direct debits and a standing order. So, in the absence of information from Morses about Mr D's income and expenditure then I have reviewed this set of statements to give me an idea what his situation was around November and December 2015 in the lead up to him applying for loan 2 in January 2016. I looked at the period from Mr D's payday in November 2015 to December 2015.

Mr D's income was £1,105 in November 2015 which does work out to be about £255 a week.

I have worked out that Mr D's monthly expenditure was around £492 (excluding small cash withdrawals and food purchases). This was made up of direct debits for items such as a PC purchase, gym membership, a satellite TV company, and transactions such as bank fees/charges, petrol, council tax and utility bills and DVLA. There is a standing order for £192 which dovetails with Mr D's credit file and so I think that was likely a HP agreement for a car.

On top of that I can see small purchases for food and there's a large cash withdrawal of £250. I can see that this seem t likely covered Mr D's rent. But I am not clear about that.

Including that cash withdrawal (which I am assuming was for rent) then Mr D's expenditure – meaning the type we would count towards regular expenditure – came to around £742. So that would have left Mr D with around £363 a month left. So overall I think its likely Morses would have come to the same conclusion it did when he applied for loan 2.

Mr D needs to appreciate that the regulations did not require Morses to carry out a credit search and from what it has told us it did not look as though it did that. And I would not have expected Morses to have reviewed any copy bank statements for loans 2 and 3 as that would have been disproportionate. I've looked at his bank statements for these loans to get an idea of what information Morses would've obtained had it done proportionate checks, such as asking Mr D about his income and expenditure.

The figures I gathered for loan 3 were similar to those identified for loan 2, and so I am planning not to uphold loans 2 and 3.

#### Loan 4

By the time Mr D had been repaying loan 3 for around 22 weeks (it was a 33 week loan term) he applied for a £600 loan in December 2016. He paid off loan 3 by using some of the money from loan 4. As the £600 for loan 4 was double the loan amount taken almost a year before and it would have been the fourth loan in the relationship Mr D had with Morses, I think it ought to have looked for more information about Mr D's finances. The loan 4 repayments were going to be £30 a week which was double the amount he had been paying for loan 2.

For Loan 4, Morses has supplied to this Service the information Mr D had declared to it about his income and expenditure: £250 a week income and £184 a week for food, rent and utilities. According to the information it had then Mr D would have had around £66 a week left to repay it.

I think that by this stage it ought to have checked to see what else Mr D had by way of regular outgoings, other credit commitments and generally. I have reviewed the credit file Mr D has sent to us and I think that he had one HP agreement which I do think was his car at around £192 a month (over £44 a week). And he had another HP agreement which had commenced in July 2016, he had a credit commitment of 11 payments of £125 a month which had started in June 2014 and was not settled until April 2018 and so I anticipate Mr D was in arrears on that account. He had a short term loan which was old – and he may have been in arrears on that too. And he had a mail order account but I can see that was inactive.

And having reviewed Mr D's bank statements for this period, and if I were to use the income and outgoings revealed on these statements, rather than the declared income and outgoing figures, my provisional decision would be the same. Mr D's income had reduced to around £980 and he was repaying the second HP agreement and he was repaying friends for money he had borrowed from them.

So, I do think that loan 4 was unaffordable. And I think that Morses ought to have known this. So, I am planning to uphold Mr D's complaint about loan 4, approved in December 2016.

#### ***How have both parties responded***

Mr D has not responded to my provisional decision.

Morses received my provisional decision and has made no additional comments.

So, some of the elements in my provisional decision which may have benefitted from clarification have not been addressed by either party. In the absence of anything further then I see no reason to depart from the provisional findings I came to last month and I repeat them here. They become part of this final determination.

For the reasons outlined above, I uphold Mr D's complaint for the loan approved in December 2016, loan 4.

## **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 Mr D at 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 Mr D 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 D 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 Mr D would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Mr D's liability in this case for what I'm satisfied it has done wrong and should put right.

Morse ought to do as follows:

- refund all interest and charges Mr D paid on loan 4;
- pay interest of 8% simple a year\* on any refunded interest and charges from the date they were paid (if they were) to the date of settlement;
- remove any negative payment information about loan 4 from Mr D's credit file;

\*HM Revenue and Customs requires Morse to take off tax from this interest. It must give Mr D a certificate showing how much tax it's taken off if he asks for one.

## **My final decision**

My final decision is that I uphold Mr D's complaint in part and direct Morse Club PLC to do as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 9 December 2021.

Rachael Williams  
**Ombudsman**