

## The complaint

Miss D complains that Morses Club PLC lent to her irresponsibly.

## What happened

Using information from Morses' records, here is a brief table of the approved loans.

<i>loan</i>	<i>date taken</i>	<i>date repaid</i>	<i>amount borrowed</i>	<i>Agreed term (actual term)</i>	<i>weekly rate</i>
1	24/08/2017	26/03/2018	£200	33w (31 w)	£10
2	26/03/2018	10/12/2019	£350	33w (89w)	£17.50
3	10/12/2019	27/05/2020	£170	34w (24w)	£8.50
4	28/01/2020	24/07/2020	£300	34w (25w)	£15
5	25/05/2020	outstanding	£300	34w (o/s)	£15
6	24/07/2020	outstanding	£300	34w (o/s)	£15

Loan 3 looks to have been refinanced into loan 5. And loan 4 looks to have been refinanced into loan 6.

One of our adjudicators looked at the complaint and thought that Loans 4 to 6 ought to be the ones that Morses put right for Miss D. Morses disagreed about loans 4 and 5 but agreed in relation to loan 6.

Miss D was asked if the proposed resolution from Morses – that loan 6 was the one it put right for her – was acceptable. She disagreed and so Morses asked that the complaint be reviewed by an ombudsman. The complaint 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've set out our general approach to complaints about irresponsible lending - including all 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 Miss D could repay the loans in a sustainable manner.

These checks could consider 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:

- 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 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, 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 Miss D's complaint in part and have explained why below.

Miss D 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 be deciding about this lending. But they were part of the borrowing relationship Miss D had with Morses. So, they are something I will account for when considering the other loans she took.

And Morses has accepted that it needs to put things right in relation to Loan 6. So, the loans which I reviewed are the remaining disputed ones which are loans 4 and 5.

I haven't recreated individual, proportionate affordability checks for loans 4 and 5 because I don't think that it is necessary to do so. I've looked at the overall pattern of Morses' lending history with Miss D, 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. I think that this point was reached by loan 4.

I say this because:

- Miss D's first loan was for £200 and loan 4 was for £300. So, the amount Miss D was borrowing had increased as well as being indebted to Moses for a significant time – two and a half years by loan 4. The highest expected weekly repayment for loan 4 was more than twice that of loan 1.
- at this point Moses ought to have known that Miss D was likely borrowing to meet an ongoing and increasing need. And this indicates her problems may have been worsening. So, because of these factors, Moses ought to have realised it was more likely than not Miss D's indebtedness was unsustainable.  
From loan 4 onwards Miss D was provided with a new loan a very short time after she settled her previous loan - when a loan was repaid, a new one would be taken the same day and this pattern continued throughout the rest of the borrowing relationship
- Miss D wasn't making any real inroads to the amount she owed Moses. Loan 6 was taken out three years after Miss D's first. And it was for a larger amount. Miss D had paid large amounts of interest to, in effect, service a debt to Moses over an extended period.

I think that Miss D lost out because Moses continued to provide borrowing from loan 4 onwards because:

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

So, overall, I'm also upholding the complaint about loans 4 to 6, of which Moses has already agreed to loan 6, and Moses should put things right for each of loans 4 to 6 as I have set out below.

### **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 Miss D 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 Miss D may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between him and this 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 Miss 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 Miss D 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 given Miss D loans 4 to 6. I understand that there is an outstanding balance on loans 5 and 6. If it has sold the outstanding debts Morses should buy these back if it's able to do so and then take the following steps. If Morses is not able to buy the debts back then it 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 Miss D 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 Miss D 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 Miss D as though they had been repayments of the principal on all outstanding loans.

If this results in Miss D 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 Miss D.

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 Miss D's borrowing for loans 4 means any information recorded about them is adverse, so Morses should remove these loans entirely from her credit file.

Morses does not have to remove loans 5 and 6 from her credit file until these have been repaid, but Morses should still remove any adverse payment information recorded about these loans.

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

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

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

**My final decision**

My final decision is that I uphold Miss D's complaint in part and direct that Morses Club PLC does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 19 October 2021.

Rachael Williams  
**Ombudsman**