

The complaint

Mr D, through his representative, complains that Morses Club PLC lent to him irresponsibly.

What happened

Using information from Morses, here is a brief table of approved loans. Loan 8 was withdrawn within 14 days of its inception and the statement of account for that loan indicates that any monies credited to Mr D were returned and any monies paid by him were refunded. And so, no loss has been established in relation to loan 8.

Loan	Date Taken	Date Repaid	Instalments (weekly)	Amount	Highest Combined Repayment**
1	24/09/2016	20/02/2017	33	£300.00	£15.00
2	29/12/2016	26/05/2017	33	£200.00	£25.00
3	20/02/2017	28/07/2017	33	£500.00	£35.00
4	17/08/2017	23/03/2018	33	£800.00	£40.00
5	23/03/2018	26/10/2018	33	£800.00	£50.00
6	23/03/2018	26/10/2018	33	£200.00	£50.00
Five month gap in lending					
7	26/03/2019	31/01/2020	52	£1,000.00	£35.00
8	03/09/2019	19/09/2019	33	£400.00	£55.00

**Where loans overlapped, the total weekly repayments due on all active loans has been calculated and where applicable, it is reflected in the highest combined repayment column.

One of our adjudicators looked at the complaint and thought that Morses should put things right for Mr D in relation to loans 5 to 8 because he considered that the overall pattern of lending was harmful - bearing in mind the type of credit as well as the relevant rules, guidance and good industry practice at the time.

Our adjudicator did not have enough information from Mr D about his financial situation for loans 1 to 4 to be able to make an assessment on those.

Morses agreed that it ought not to have lent to Mr D for loans 5 and 6 but it said that the five month gap before loan 7 meant that it broke the chain of lending and as such loan 7 should be assessed differently. It said that loan 8 was withdrawn. So, it disagreed with our adjudicator's view about loans 7 and 8.

This resolution on loans 5 and 6 was put to Mr D but his response was that he agreed with our adjudicator's view and did not accept Morses resolution.

The complaint remained unresolved and was passed to me to decide and I issued a provisional decision on 22 November 2021 in which I gave reasons why I thought that

Morses should put things right for Mr D in relation to loans 5 and 6 only. Morses had already agreed to that.

My provisional findings are set out here in smaller type face to differentiate it.

My provisional decision dated 22 November 2021

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 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. Our adjudicator thought that this applied to Mr D's circumstances from loan 5. I return to this later in the provisional decision.

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 payments. 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.

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

Mr D has accepted our adjudicator's view and so I take it from that acceptance that he agrees with the outcome for loans 1 to 4 and as these appear to have been resolved then I have not reviewed them.

As Morses has agreed to put things right for Mr D in relation to loans 5 and 6 then these are resolved and I have not reviewed them. The redress section below reflects what I am planning to ask Morses to do for loans 5 and 6 as it has agreed to do.

The unresolved loans are 7 and 8. As I outlined in the '*what happened*' section of the provisional decision, I do not consider that loan 8 is one on which Mr D has suffered a loss. On current evidence he withdrew from that loan within the fourteen day entitlement period to do so and I have no evidence

to suggest that he was left out of pocket on that loan. And so, I am planning to disregard it for the purposes of his irresponsible lending complaint. If Mr D has different evidence about this loan then he has two weeks within which to send that additional evidence to me.

Turning to the gap between loans 6 and 7, then I agree with our adjudicator that a five month gap after 18 months of lending to Mr D would not – in my view – break the lending relationship and I have approached this as one lending chain from September 2016 to September 2019.

However, I do think that the five month gap between loans 6 and 7 does not fit with the concept of repetitive lending and so I looked again at loan 7. I think that after 18 months of lending, for Mr D to reapply for a £1,000 loan over a 52 week period – the longest term to date - then Morses ought to have done more to verify the income and expenditure figures it had obtained from him. I say this because of the amount and term of the loan, and the position in the lending relationship at which Mr D had reapplied for a large loan. And so, a full financial review of Mr D's situation was warranted as a proportionate check in my view. I do not think Morses did that.

Here is a summary of the figures Mr D gave to Morses for loan 7. The expenditure figures did not include any payment commitments towards other loans. It only included rent, utilities, media costs, council tax and groceries.

Income	Expenditure	Disposable income
£250	£140	£110

I do not consider this to have been enough to demonstrate proportionate checks for a £1,000 loan after 18 months. Morses could've verified his expenditure several ways. It could've asked for copies of his bank statements or it could've asked to see copies of bills, rent agreement or any other documentary evidence that it felt it needed to see.

I don't think Morses carried out a proportionate check before approving loan 7, but for me to be able to uphold Mr D's complaint about loan 7, I would have to be satisfied that had Morses carried out a full review, it would likely have discovered that Mr D couldn't afford the repayments he was committed to repaying for 52 weeks.

But Mr D has not sent to us any details of his financial situation in March 2019 and so I am not able to take this further. On current evidence I am planning not to uphold loan 7 and I make no finding on loan 8 as no loss occurred. Mr D can send to us additional financial evidence within two weeks for me to review if he wishes.

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.

Since the provisional decision was issued, we have received Mr D's response that he accepts the findings in it. And so he agree with the outcome that loans 5 and 6 are the ones being upheld.

Morses has been sent the provisional decision and we have written to it again recently. We have not heard from it but as I know from its earlier response that it was content to agree to the uphold outcome on loans 5 and 6 then it it's not likely its response would differ when my provisional decision came to the same outcome.

In the circumstances I have decided to issue my final decision which is that I repeat the provisional findings and reasoning here so that they become part of this decision. I uphold Mr D's complaint about loans 5 and 6.

Putting things right

In deciding what redress Moses should fairly pay in this case I've thought about what might have happened had it not lent to Mr D for loans 5 and 6, as I'm satisfied it ought not 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 him 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 Moses' liability in this case for what I'm satisfied it has done wrong and should put right.

Moses has agreed to put things right for loans 5 and 6 and this is how I plan to direct that it does that:

- A. Moses should add together the total of the repayments made by Mr D towards interest, fees and charges on these loans, including payments made to a third party where applicable, but not including anything it has already refunded.
- B. Moses should calculate 8% simple interest* on the individual payments made by Mr D which were considered as part of "A", calculated from the date Mr D originally made the payments, to the date the complaint is settled.
- C. Moses should pay Mr D the total of "A" plus "B".
- D. The overall pattern of Mr D's borrowing for loans 5 and 6 means any information recorded about them is adverse, so it should remove these loans entirely from Mr D's credit file. If Moses has sold any of the loans Moses should ask the debt purchaser to do the same.

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

My final decision

My final decision is that I uphold Mr D's complaint in part and I direct that Moses Club PLC does 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 4 January 2022.

Rachael Williams
Ombudsman