

The complaint

Mr T complains (through a representative) that Morses Club PLC (Morses) didn't carry out effective affordability checks. Had it done so, then Mr T wouldn't have been provided with the loans.

What happened

Our adjudicator partially upheld Mr T's complaint. Morses did not agree with the adjudicator's opinion and provided some additional comments. The complaint was then passed to me.

I issued my provisional decision explaining the reasons why I was also intending to partially uphold Mr T's complaint – but I had reached a different conclusion to the one reached by the adjudicator. I was intending to not uphold as many loans. A copy of the background to the complaint and my provisional findings are below in italics and form part of this final decision.

What I said in my provisional decision:

Mr T took seven home collected loans between November 2013 and January 2019. I've included some of the information we've received about these loans in the table below.

loan number	loan amount	agreement date	repayment date	term (weeks)	repayment amount
1	£200.00	12/11/2013	14/10/2014	50	£7.00
2	£200.00	14/10/2014	21/07/2015	50	£7.00
3	£200.00	21/07/2015	08/04/2016	34	£10.00
4	£300.00	20/07/2016	07/04/2017	33	£15.00
5	£300.00	07/04/2017	12/01/2018	33	£15.00
6	£800.00	30/01/2018	25/01/2019	52	£28.00
7	£800.00	25/01/2019	24/01/2020	52	£28.00

Morses acquired some of these accounts from a previous lender, but it only purchased loans that were open in March 2014, which was when the acquisition took place. So Morses believes there may have been four further (prior to November 2013) but it doesn't have any information about them because these loans were likely sold, settled or closed before the acquisition took place. So, the only loans that this decision covers are those listed in the table above.

Our adjudicator didn't think it was wrong for Morses to have granted loans 1 and 2. But the adjudicator thought that loan 3 and all further loans shouldn't have been lent. He said the pattern of lending indicated Mr T had become persistently reliant on the loans and therefore shouldn't have been provided with loans 3 - 7.

Mr T appears to have accepted the adjudicator's findings.

Morses partial agreed with the adjudicator's assessment about loans 6 and 7. Morses offered to settle the complaint in line with the adjudicator's assessment.

But it disagreed with the adjudicator's assessment in relation to loans 3 – 5. In summary, it doesn't feel Mr T had become persistently reliant on these loans for the following reasons:

- *Taking a third loan in 20 months isn't excessive*
- *The increase in lending between loans 1 – 5 was small going from £200 to £300*
- *Loans 1 and 2 were repaid early which didn't suggest any financial difficulties*
- *Based on Mr T's declared income and expenditure the loans looked affordable*

As no agreement has been reached, the case has been passed to me for a decision.

What I've provisionally 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 short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Mr T doesn't appear to disagree with our adjudicator's findings that Morses wasn't wrong to lend loans 1 and 2. So, it seems this lending isn't in dispute and so I no longer think that I need to make a finding about it. But I have kept these loans in mind when thinking about the overall lending relationship between Morses and Mr T.

Morses has also accepted that something went wrong when loans 6 and 7 were granted, and it has offered to put things right for Mr T in line with the adjudicator's recommendations. So like loans 1 and 2, these loans are no longer in dispute, but for completeness I've included what Morses need to do to put things right in the 'putting things right' section at the end of the decision.

Instead, this decision will focus on whether Morses did anything wrong when it granted loans 3 - 5.

Morses had to assess the lending to check if Mr T could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Morses's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr T's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Morses should have done more to establish that any lending was sustainable for Mr T. These factors include:

- *Mr T 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 particular level of income);*
- *Mr T having a large number of 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);*
- *Mr T 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 for Mr T.

Morses was required to establish whether Mr T could sustainably repay the loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr T was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

Industry regulations say that payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr T's complaint.

Loans 3 and 4

As the adjudicator has pointed out, by loan 3 Mr T had taken three loans in around 20 months and he was asking a new loan either on the day the previous one was repaid or very shortly afterwards. Which is why the adjudicator thought this loan (and future loans) should be upheld.

Overall, I don't think the loan activity was quite enough to suggest Mr T had become reliant on these loans. The loan amounts hadn't really increased significantly and there wasn't any obvious repayment difficulties, indeed, Moses says loans 1 and 2 were repaid early. The number of loans and time in debt, is in my view, not particularly concerning, at this point in time. So, I don't agree with the adjudicator that Moses ought to have reasonably concluded that these loans were unsustainable for Mr T.

But that doesn't mean that Moses carried out a proportionate check. Mr T had been almost continuously indebted to Moses for 20 months, and he was returning for further credit, extending his indebtedness for at least another 34 weeks. So, I don't think it was reasonable for Moses to have relied on what Mr T declared to it about his income and expenditure. Even though this information suggested Mr T had disposable income of around £120 per week, Moses, in my view still needed to do more.

Instead, I think it needed to gain a full understanding of Mr T's actual financial position to ensure loans 3 and 4 were affordable for him. This could've been done in several ways, such as asking for evidence of outgoings, or looking at bank statements and/or Mr T's credit report. This might've helped verify information provided and revealed whether there was any other information that Moses might've needed to consider about Mr T's financial position.

However, that isn't the end of the matter. For me to be able to uphold these loans, I have to be satisfied that Moses didn't carry out proportionate checks but had it done so, it would've likely discovered that Mr T couldn't afford these loans.

Mr T hasn't provided this Service with a copy of his bank statements or his credit report. So, I don't know what further checks may have highlighted about his financial situation at the time these loans were approved. So, without any further information from Mr T about his living costs, it's difficult for me to conclude what Moses would've seen if it had made better checks.

Looking at everything together though, I've not seen quite enough evidence to suggest Moses shouldn't have lent loans 3 and 4. Even considering what Mr T declared to Moses for his income and expenditure, loans 3 and 4 appeared affordable. I'm not minded therefore to think Moses was wrong to have provided these loans.

As this is the case, I'm not intending to uphold Mr T's complaint about loans 3 and 4.

Loan 5

The loan being pounds and pence affordable is only part of the consideration. So, I haven't felt he need to recreate individual, proportionate affordability checks for this loan because I didn't consider it necessary to do so. Although, I accept, based on what Moses provided this Service, that this loan would've looked affordable to it.

So, in addition to assessing the circumstances behind each individual loan provided to Mr T, Moses also needed to consider the overall pattern of lending and what unfolded during the course of its lending relationship with Mr T. Having looked at the overall pattern of Moses's lending history with Mr T, I agree with our adjudicator that at this point in time, Moses should reasonably have seen that further lending was unsustainable, or otherwise harmful, at the time it provided loan 5. I say this because;

- Mr T had taken out five loans over an approximately three and a half year period. I think this was now a long time to be using this type of high cost credit.*
- At this point Moses ought to have realised Mr T was not managing to repay his loans sustainably. Mr T had taken out 5 loans in around 42 months and he had been indebted to Moses for almost for the entire time. So Moses ought to have realised it was more likely than not Mr T was having to borrow further to cover an ongoing need and that Mr T's indebtedness was increasing unsustainably and his underlying financial situation didn't seem to be improving.*
- By loan 5, Mr T's weekly repayments had more than double compared to what he was paying when he took loan 1. He started paying £7 per week but was now committed to paying £15 per week. So, Mr T's weekly repayments were increasing which suggests that the loans weren't sustainable for him and his borrowing didn't significantly decrease over the lending relationship.*
- Mr T frequently took new loans on the same day as previous loans were repaid. Moses ought to have realised it was more likely than not Mr T, on these occasions, was having to borrow further to effectively cover a long-term financial need. To me, this is indicative of his indebtedness not being sustainable.*
- Mr T wasn't making any real inroads to the amount he owed Moses. Loan 7 was taken out over 5 years after Mr T's first loan and it was one of the largest amounts he had borrowed. Mr T had paid large amounts of interest to, in effect, service a debt to Moses over an extended period.*

I think that Mr T has lost out because Moses continued to provide borrowing from loan 5 onwards because:

- these loans had the effect of unfairly prolonging Mr T's indebtedness by allowing him to take expensive credit over an extended period of time.*
- the number of loans and the length of time over which Mr T borrowed was likely to have had negative implications on his ability to access mainstream credit and so kept him in the market for these high-cost loans.*

So, I'm intending to uphold the complaint about loans 5 to 7 and Moses should put things right as set out below.

Mr T's representative confirmed receipt of the provisional decision and didn't have any further information or evidence for this Service to consider.

Morses didn't respond to the provisional decisions. So I don't know what it thinks about the outcome I was proposing to reach.

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.

As Mr T has accepted the findings I outlined in the provisional decision and Morses hasn't responded to the decision, I see no reason to depart from the findings I previously reached. I still think Morses ought to have realised by loan 5 that the lending was unsustainable for Mr T and it should put things right for him as I've outlined below.

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 T from loan 5, 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 T 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 T 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 T 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 shouldn't have given Mr T loans 5 to 7.

- A) Morses should add together the total of the repayments made by Mr T 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) Morses should calculate 8% simple interest* on the individual payments made by Mr T which were considered as part of "A", calculated from the date Mr T originally made the payments, to the date the complaint is settled.
- C) Morses should pay Mr T the total of "A" plus "B".
- D) The overall pattern of Mr T's borrowing for loans 5 to 7 means any information recorded about them is adverse, so it should remove these loans entirely from Mr T's credit file.

*HM Revenue & Customs requires Morses to deduct tax from this interest. Morses should give Mr T a certificate showing how much tax it has deducted, if he asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr T's complaint in part.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 22 December 2021.

Robert Walker
Ombudsman