

## The complaint

Ms H, through her representative, complains that Morses Club PLC lent to her irresponsibly.

## What happened

Loan	Start Date	End Date	Capital Amount	Interest amount	Term	Repayment amount
1	13/07/2017	14/03/2018	£300.00	£195.00	33	£15.00
2	27/09/2017	22/06/2018	£400.00	£260.00	33	£20.00
3	14/03/2018	16/01/2019	£400.00	£260.00	33	£20.00
4	22/06/2018	16/01/2019	£400.00	£260.00	33	£20.00

One of our adjudicators looked at the complaint and thought that Morses should put things right for Ms H in relation to loans 2, 3 and 4. He thought that the percentage of income she had to pay over to Morses when she took loan 2 was too high.

Morses agreed that it ought not to have approved loans 3 and 4 and has said it will put things right for her. But it disagreed with the outcome for loan 2.

Ms H has said she agrees with what our adjudicator has said.

From the responses from both parties to the complaint its clear to me that the only loan about which there remains a dispute is loan 2. So, within the context of the lending relationship this decision is focussed on loan 2.

## 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 Ms H 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.

Morses was required to establish whether Ms H could sustainably repay her 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 to do that.

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

On the information Morses has provided, Ms H's income for the first two loans were from benefits. And for some reason, Ms H's income for loan 2 reduced considerably. Here is a little bit of additional information Morses provided to us when we were investigating the complaint.

LOAN	INCOME	EXPENDITURE
1	£339.00	£122.00
2	£214.00	£85.00

Morses has told us that it had verified her benefits income for loans 1 and 2 and so I am satisfied that on Morses own evidence it knew she received those amounts. Therefore, it is easy to deduce that Morses knew of, and was able to see, the marked reduction in her weekly income from £339 to £214.

Ms H had a dependant and loan 1 had not been repaid when she applied for loan 2, which was for £400 and more than she had asked for two months earlier for loan 1.

When Ms H had applied for loan 1 just two months earlier then various questions had been asked of her about her expenditure and again, for loan 2, there were significant discrepancies in her answers. Some examples are given here taken from Morses own records provided to us.

LOAN	RENT CONT	UTILITIES CONT	CHILDCARE CONT	GROCERIES CONT
1	£4.00	£40.00	£13.00	£55.00
2	£15.00	£25.00	£0.00	£30.00

Ms H's income had gone down, her rent had increased, and for utility bills which usually are relatively constant she had entered a different figure. And the same for groceries and for childcare. Overall, I am satisfied that Morses did not carry out the checks I would have expected it to carry out. Alternatively, having seen such different information when compared to the information for loan 1 and loan 2, it did not act on that information. It ought to have verified her income and expenditure at the very least.

In addition to this, I agree that the total sum Ms H was due to have been paying Morses (£35 a week for loans 1 and 2) was too high considering her income at loan 2. In these circumstances, there was a significant risk that Ms H wouldn't have been able to meet her existing commitments without having to borrow again. So, I think it's unlikely Ms H would've been able to sustainably meet her weekly repayments for loans 1 and 2 together.

I uphold Ms H's complaint about loan 2. As Morses has already agreed to put things right for Ms H for loans 3 and 4 then I have set out below the redress for all three loans for completeness. My understanding is that loans 3 and 4 were sold to third parties.

### **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 Ms H from loan 2 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 H may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them 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 Ms H 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 Ms H 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.

If Morses have sold the 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 H towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Morses have already refunded.
- B) Morses should calculate 8% simple interest\* on the individual payments made by Ms H which were considered as part of "A", calculated from the date Ms H 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 H as though they had been repayments of the principal on all outstanding loans.

If this results in Ms H 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 H.

However, if there is still an outstanding balance then Morses should try to agree an affordable repayment plan with Ms H.

Morses shouldn't pursue outstanding balances made up of principal Morses has already written-off.

- E) Morses should remove any adverse payment information recorded on Ms H's credit file in relation to loans 2 to 4. If Morses has sold the loans, and has not been able to buy the debts back, it must ask the debt purchaser to do the same.

\*HMRC requires Morses to remove the tax from this interest. If asked for, Ms H should be provided with a certificate showing the tax taken off.

If Morses intends to use the refund to reduce the amount Ms H owes Morses it must do so after tax.

### **My final decision**

My final decision is that I uphold Ms H's complaint about loan 2 and endorse Morses offer to put things right for loans 3 and 4.

Morses Club PLC should do as I have directed above in relation to each of the loans.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 18 April 2022.

Rachael Williams  
**Ombudsman**