

The complaint

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

What happened

Here is a brief loan table showing the loans approved for Mr D.

Loan	Date Taken	Date Repaid	Instalments	Loan Amount	Highest Combined Weekly Repayment
1	19/12/2019	16/06/2020	34	£200.00	£10.00
2	10/03/2020	01/10/2020	34	£300.00	£25.00
3	16/06/2020	01/12/2020	34	£400.00	£35.00
4	01/10/2020	outstanding	34	£300.00	£35.00
5	01/12/2020	outstanding	53	£700.00	£39.50

One of our adjudicators considered that Morses should put things right for loans 3 to 5.

Morses responded and agreed to put things right for Mr D in relation to loans 4 and 5, but it did not agree with the uphold for loan 3. This was put to Mr D who replied to say that he agreed with our adjudicator and did not wish to accept Morses' offer about loans 4 and 5.

Our adjudicator wrote again to endorse his first view. Morses asked that the unresolved complaint be reviewed by an ombudsman. So it 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'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.

Morses had to assess the lending to check if Mr D 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' checks could have considered a number of different things, such as how much was being lent, the size of the repayments, and Mr D's income and expenditure.

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 D. These factors include:

- Mr D 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 D 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 D 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 D.

Morses was required to establish whether Mr D 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 D 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, 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 D's complaint.

Mr D does not take issue with the adjudicator's outcome for loans 1 and 2 and Morses has agreed with our adjudicator in relation to loans 4 and 5. So the loan about which there remains a dispute is loan 3. It is loan 3 I have focussed on in this decision and I have reviewed it within the context of the complete lending relationship.

Loan 3 was applied for when Mr D had already been in debt to Morses for several months and asking for £400 was double the amount he had been asking for at loan 1. And by the dates given and shown on the loan table (above), it seems that the capital from loan 3 was used to repay loan 1. So, Mr D's need for the credit was increasing. Loan 3 would have indebted him to a further 34 weeks and loan 2 remained outstanding. So, the cost to him would have been higher as he had two loans to repay and it was going to be £35 a week.

Morses carried out a credit check on 18/12/2019 – before loan 1 – and having reviewed those results sent to us by Morses, I think that it gave Morses enough information to be aware that Mr D had had financial issues in the relatively recent past. Mr D had recorded against his name several unsatisfied County Court Judgments (CCJs), the latest being just three months before loan 1 was approved. So by the time Mr D was increasing his weekly spend on credit with Morses and increasing his debt with it at loan 3, then Morses already had the information it had gained in December 2019.

One illustration from that credit search was *'Total current balances on active accounts opened more than 12 months ago, excluding mortgages'* was just under £6,000. And the amount of money Mr D was going to be spending on the Morses loan as a proportion of his weekly income was relatively high as I would describe Mr D as being a customer with a modest to low weekly income.

I appreciate that Morses did the credit search before loan 1 but still it had this information on its files when Mr D came to Morses for Loan 3.

And I note that Mr D's expenditure Morses relied on when making its decision about loan 3 was relatively low and did not include anything for food. So, I do not consider its recent argument submitted to us persuasive: that the disposable income information it had for Mr D was enough for him to be able to afford Loan 2 and 3 together in a sustainable way. I say that because I do not think its argument for loan 3 was based on an accurate set of facts. Additional debt burden was not what Mr D needed.

So, I'm upholding the complaint about loans 3 to 5 (of which loans 4 & 5 Morses has already agreed to put things right) and Morses should put things right in the following way.

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 D at loan 3, 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 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 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 Morses' liability in this case for what I'm satisfied it has done wrong and should put right.

Morses shouldn't have given Mr D loans 3 to 5. I understand that Mr D owes Morses money. I am planning to direct Morses to do as I have set out here.

If Morses has 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 Mr D towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.

B) Morses 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) Morses should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr D as though they had been repayments of the principal on all outstanding loans.

If this results in Mr 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 Mr D. However, if there is still an outstanding balance then Morses should try to agree an affordable repayment plan with Mr D.

E) Morses should remove any adverse payment information recorded on Mr D's credit file in relation to loans 3 to 5.

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

My final decision

My final decision is that I uphold Mr D's complaint in part and I direct that Morses 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 20 May 2022.

Rachael Williams
Ombudsman