

The complaint

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

What happened

Our adjudicator partly upheld Mr H's complaint. Morses didn't agree with the adjudicator's opinion. The complaint was then passed to me.

I issued my provisional decision explaining the reasons why I was also intending to partially uphold Mr H's complaint – but for not as many loans as the adjudicator. A copy of the background to the complaint and my provisional findings follow this in italics and form part of this final decision.

What I said in my provisional decision:

Mr H took four loans between June 2014 and November 2016 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)	weekly repayment
1	£200.00	20/06/2014	19/12/2014	50	£7.00
2	£400.00	23/01/2015	14/12/2015	50	£14.00
3	£500.00	14/12/2015	30/11/2016	52	£17.50
4	£500.00	30/11/2016	02/07/2018	52	£17.50

Morses acquired some of these accounts from a previous lender, but it only purchased loans that were open in March 2014, when the acquisition took place. So Morses believes there was one further loan, taken out before loan one in the table above.

A review of Mr H's credit file shows the loan was closed in December 2013. So, like the adjudicator explained in their assessment, Morses wasn't responsible for the sale of that loan, and that loan would've formed part of a different lending chain. But overall, Mr H did have five loans, but only the four in the table above can be considered.

Our adjudicator didn't think it was wrong for Morses to have granted loans 1 and 2. But the adjudicator thought that loans 3 and 4 shouldn't have been lent. He said the pattern of lending indicated Mr H had become persistently reliant on the loans and therefore they shouldn't have been provided.

Neither Mr H nor his representative responded to the adjudicator's findings.

Morses partial agreed with the adjudicator's assessment about loans 1 and 2. But it disagreed with the adjudicator's assessment in relation to loans 3 and 4. In summary, it

doesn't feel Mr H had become persistently reliant on these loans for the following reasons:

- There was no evidence that Mr H was using other funds to repay these loans.*
- Based on Mr H's declared income and expenditure the loans looked affordable for him.*
- Moses decision to lend was compliant with the regulations applicable at the time and it considers the loans to have been sustainable.*

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 H doesn't appear to disagree with our adjudicator's findings that Moses wasn't wrong to lend loans 1 and 2. So, it seems this lending isn't in dispute. But for the avoidance of doubt, given this was early on in the lending relationship and given the amounts borrowed, I don't think it was wrong of Moses to have provided them. But I have kept these loans in mind when thinking about the overall lending relationship between Moses and Mr H.

Instead, this decision will focus on whether Moses did anything wrong when it granted loans 3 and 4.

Moses had to assess the lending to check if Mr H 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. Moses'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 H'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 Moses should have done more to establish that any lending was sustainable for Mr H. These factors include:

- Mr H 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 H 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 H 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 H.

Moses was required to establish whether Mr H 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 H 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 H's complaint.

Loan 3

As the adjudicator has pointed out, by loan 3 Mr H had taken three loans in around 18 months, he was taking larger loans, his repayments to Moses had increased and Mr H was also committing to repay Moses for another 52 weeks. 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 H had become reliant on the loans. The loan amounts had increased but there weren't any obvious repayment difficulties, indeed, loans 1 and 2 appeared to have been repaid without any problems.

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 this loan was unsustainable for Mr H.

But that doesn't mean that Moses carried out a proportionate check. Mr H had been almost continuously indebted to Moses for 18 months, and he was returning for further credit, extending his indebtedness for at least another 52 weeks. Overall, I don't think it was reasonable for Moses to have relied on what Mr H declared to it about his income and expenditure. Even though this information suggested Mr H had disposable income of around £90 per week, Moses, in my view still needed to do more.

Instead, I think it needed to gain a full understanding of Mr H's actual financial position to ensure loan 3 was affordable. This could've been done in several ways, such as asking for evidence of outgoings or looking at bank statements and/or Mr H'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 H's general 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 by carrying out a proportionate check it would've likely discovered that Mr H couldn't afford these loans.

Mr H hasn't provided this Service with a copy of his bank statements, But I do have a copy of Mr H's credit report that was generated in March 2019. So, the information recorded within it, would cover the period of time when loan 3 was approved.

The credit report shows that Mr H had a credit card, mobile phone and what looks like a rent to-buy loan. But there isn't any indication that Mr H was a regular user of other forms of high cost credit, such as payday loans or other home credit loans from other providers. There also, weren't any other signs of financial distress. This has led me to conclude, that even if Moses would've carried out further checks it still would've likely have concluded Mr H could've afforded his repayments.

Looking at everything together though, I've not seen quite enough evidence to suggest Moses shouldn't have lent loan 3. I'm not minded therefore to think Moses was wrong to

have provided this loan.

As this is the case, I'm not intending to uphold Mr H's complaint about loan 3.

Loan 4

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 H, Moses also needed to consider the overall pattern of lending and what unfolded during the course of its lending relationship with Mr H. Having looked at the overall pattern of Moses's lending history with Mr H, 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 4. I say this because;

- Mr H had taken out four loans over an approximately two and a half years. I think this was now a long time to be using this type of high cost credit and Mr H was also extending his indebtedness for a further year.
- At this point Moses ought to have realised Mr H was not managing to repay his loans sustainably. Mr H had taken out 4 loans 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 H was having to borrow further to cover an ongoing need and that Mr H's indebtedness was increasing unsustainably and his underlying financial situation didn't seem to be improving.
- By loan 4, Mr H's weekly repayments had more than doubled compared to what he was paying when he took loan 1. He started paying £7 per week but was now committed to paying £17.50 per week. So, Mr H's weekly repayments were increasing which suggests that his finances may have been worsening.
- Mr H 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 H, 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.

I think that Mr H has lost out because Moses provided loan 4 because:

- these loans had the effect of unfairly prolonging Mr H'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 H 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 loan 4 and Moses should put things right as set out below.

Response to the provisional decision

Both Mr H and Moses were asked to provide any further comments, information or evidence for this Service's consideration no later than 12 January 2022.

Moses didn't respond to the provisional decision.

Mr H's representatives acknowledged receipt of the provisional decision, it explained it would forward the decision to Mr H and get back in touch with this Service if there were any further comments.

No further contact has been received and the deadline for a response has now expired, I see no reason to delay issuing the final 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.

As neither Mr H nor Moses provided this Service with any new comments or information I see no reason to depart from the findings that I made in the provisional decision. So, I still think, that Moses was wrong to have advanced loan 4 because the lending was now harmful and unsustainable for Mr H.

I've set out below what Moses needs to do in order to put things right for Mr H.

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 granted 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 Mr H 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 H 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 H would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Moses's liability in this case for what I'm satisfied it has done wrong and should put right.

Moses shouldn't have given Mr H loan 4.

A) Moses should add together the total of the repayments made by Mr H 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 H which were considered as part of "A", calculated from the date Mr H originally made the payments, to the date the complaint is settled.

C) Moses should pay Mr H the total of "A" plus "B".

D) The overall pattern of Mr H's borrowing for loan 4 means any information recorded about

it is adverse, so it should remove this loan entirely from Mr H's credit file.

*HM Revenue & Customs requires Morses to deduct tax from this interest. Morses should give Mr H 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 my provisional decision, I'm upholding Mr H's complaint in part.

Morses Club PLC should put things right for Mr H as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 15 February 2022.

Robert Walker
Ombudsman