

The complaint

Mr D complains (through a representative) that Morses Club PLC (Morses) didn't carry out proper affordability checks before it advanced his loans.

What happened

Mr D took four loans between October 2019 and May 2021. 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	£400.00	24/10/2019	16/06/2020	34	£20.00
2	£300.00	16/06/2020	13/11/2020	34	£15.00
3	£700.00	16/06/2020	29/01/2021	53	£24.50
4	£500.00	06/05/2021	outstanding	35	£25.00

The 'weekly repayment' column above is the cost per week per loan. So, where loans overlapped the cost will be greater. For example, when loans 2 and 3 were running at the same time Mr D's weekly commitment was £39.50.

Based on Morses statement of account, an outstanding balance remains due for loan 4.

Morses considered Mr D's complaint and issued its final response letter. Morses investigated the complaint and concluded it had made a reasonable decision to provide these loans and so it didn't uphold his complaint.

Mr D's representative didn't agree with the outcome reached by Morses and his representative referred the complaint to the Financial Ombudsman in January 2022.

The complaint was considered by an adjudicator who didn't think Morses made an unreasonable decision to lend loans 1 and 2. But, he did think loans 3 and 4 ought to not have been provided because, in the adjudicator's view the portion of Mr D's income that would have to be used to make the repayments was too high and therefore the loans were likely to be unsustainable.

Mr D's representative acknowledged receipt of the adjudicator's assessment but no further comments were provided.

Morses disagreed with the adjudicator's recommendation to uphold the complaint. I've summarised its response below.

- While loans 2 and 3 were lent on the same date, the appropriate checks were carried out.
- Morses doesn't consider the portion of income Mr D would need to use to repay these loans to be excessive.
- Loan 3 was settled early which doesn't suggest financial difficulties.

- There is a three-month break in lending between Mr D repaying loan 3 and taking loan 4.
- The income for loan 4 was confirmed through a check with a credit reference agency.
- Moses was made aware of Mr D's change in circumstances from September 2021 and in November 2021 Mr D told it that he would repay the loan in full.

The adjudicator went back to Moses to explain why these comments hadn't changed his mind about the outcome he had reached.

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

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.

It seems, that Mr D's representative hasn't disagreed with the outcome that the adjudicator reached – so I don't think there is any ongoing dispute about loans 1 and 2. As a result I won't be making a finding about these loans

Instead this decision will focus on whether Moses was right (or wrong) to have granted Mr D loans 3 and 4.

Moses 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. Moses' 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 D'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 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.

Moses 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, 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 D's complaint.

For loan three Mr D declared that his weekly income remained the same at £270 and his declared weekly expenditure was £112. Leaving just over £158 to a week to afford the combined loan repayments of £25 per week.

Morses says for loans 3 and 4 it also carried out an income verification check, which it has explained that Mr D's income was checked with a credit reference agency to check its accurate. Although based on the spreadsheet provided by Morses there is no salary or benefits (such as a pension) recorded for either of these loans.

Whereas for loan 1, Morses has recorded that Mr D was in receipt of benefits and it saw some evidence of this. It's worth saying again that Morses hasn't provided the information that it saw or provided details of the type of benefit that was provided. Given, what has been recorded for loan 1, I think it's highly likely, that during the course of this lending relationship Mr D was in receipt of some benefits.

In addition, the information provided by Morses shows some of the expenditure information in my view wasn't likely to be accurate. For example, for loan 3 he declared his weekly 'other credit' expenditure was only £1 – this doesn't seem plausible to me as I am not sure what sort of credit Mr D would've had that had a monthly repayment of £4.

In addition, for loan 3 Mr D declared he had council tax payments but then had nothing when loan 4 was approved, despite there being no obvious change in circumstances. Again, in my view this doesn't quite add up.

However, notwithstanding my concerns about some of the information that Morses collected, considering the information Mr D provided about his income and expenditure, Morses may have felt, these loans were pounds and pence affordable because this is what the information showed. But as I've explained above, that is only part of what Morses had to consider before granting these loans. Having looked at everything, I'm upholding Mr D's complaint about loans 3 and 4.

Loan 3 was taken the same day that loan 2 was taken out. These loans were for difference amounts and for different repayment terms 34 and 53 weeks. So, Mr D was making a significant commitment to Morses to pay nearly £40 per week for at least the next 34 weeks, which was the period where these loans overlapped. Although, for loan 4, there was a small break, he then was again making another commitment for another 35 weeks of £25.

As Morses has pointed out in response to our adjudicator, Mr D was committed to spending 15% of his income when loan 3 was advanced and 13% for loan three. In my view these payments in this case were too high when considering what it knew about Mr D's circumstances.

In these circumstances, there was a significant risk, in my view that Mr D wouldn't have been able to meet his existing commitments without having to borrow again. So, I think it's unlikely Mr D would've been able to sustainably meet his repayments for these loans.

I say this because Mr D was making a total commitment to pay Moses for at least another 34 weeks for each loan and I think it's fair to say that Mr D's income was modest and potentially made up solely of benefits. On top of that, I've already pointed out some concerns I have about what Mr D had declared for his outgoings.

While Moses doesn't think those percentages are excessive I think they were. There is clearly going to be a line beyond which it wouldn't have been reasonable for Moses to lend, but that's going to be particular to the circumstances of each individual complaint. And whilst a large proportion is going to increase the likelihood in any case that something has gone wrong there isn't an automatic cut off – we'll always look at the broader circumstances – as I've done here.

I'm not suggesting that just because Mr D had a modest income which was likely made up from benefits that funds couldn't be lent to him but what Moses needed to do is appreciate that taking into account the commitments that he had to it and over the time period was in my view not sustainable.

I've considered what Moses says in response to the adjudicator, but I don't think these comments change my mind. As I've said above, some checks were carried out which may have shown the loans were affordable, but Moses also had to consider whether the loans were sustainable and I don't think, in this case it did that.

In addition, while I can see the three-month gap between loans 3 and 4, I don't think that makes a difference to the outcome that I'm reaching. I say this because, the information Moses was given as part of the application process did show, in my view that this loan was unlikely to be sustainable for him.

Based on what I've seen I'm upholding Mr D's complaint about loans 3 and 4 and I've outlined below what Moses needed to do in order to put things right.

Putting things right

In deciding what redress Moses should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr D from 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 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 D 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 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.

Morses shouldn't have given Mr D loans 3 and 4.

If Morses has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If Morses isn't able to buy the debt back then it 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 you have 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 the upheld outstanding loan, and treat any repayments made by Mr D as though they had been repayments of the principal on the outstanding loan. 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 the outstanding loan. 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 information recorded on Mr D's credit file in relation to loans 3 and 4.

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

My final decision

For the reasons I've explained above, I'm upholding Mr D's complaint in part.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 5 October 2022.

Robert Walker
Ombudsman