

The complaint

Mr P (through a representative) complains that Morses Club PLC (Morses) didn't properly undertake affordability checks before granting these loans.

What happened

Mr P was advanced five home collected loans between June 2017 and June 2020. 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	£100.00	21/06/2017	06/10/2017	20	£7.50
2	£300.00	13/10/2017	20/04/2018	33	£15.00
3	£800.00	20/04/2018	14/09/2019	33	£40.00
4	£480.00	19/09/2019	11/06/2020	52	£16.80
5	£700.00	29/06/2020	outstanding	34	£35.00

Following Mr P's complaint Morses wrote to his representative to explain that it wasn't going to uphold the complaint because it had carried out proportionate checks before these loans were advanced.

Mr P's representative didn't accept the outcome and instead referred the complaint to the Financial Ombudsman Service.

The case was then considered by an adjudicator and it was partly upheld. She thought it was fair for Morses to have granted loans 1 – 3. However, she concluded loans 4 and 5 shouldn't have been advanced because it was clear that the lending was now harmful to Mr P.

Mr P's representative acknowledge receipt of the adjudicator's assessment.

Morses disagreed with the adjudicator's assessment. In summary it said:

- Mr P had five loans over three years which Morses doesn't consider to be excessive.
- Morses confirmed Mr P's income from loan 4 through a credit reference agency.
- Mr P had enough disposable income to afford the loan repayments.
- Loan 5 did take longer to repay than expected but this was because of the COVID-19 pandemic.

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

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 this type of lending - including all the relevant rules, guidance and good industry practice - on our website.

Neither Mr P nor his representative have disagreed with the adjudicator's findings in relation to loans 1 – 3. So, it seems this lending isn't in dispute and so I no longer think that I need to make a finding about them. But I have kept these loans in mind when thinking about the overall lending relationship between Morses and Mr P.

Instead, this decision will focus on whether it was reasonable of Morses to advance loans 4 and 5 to Mr P.

Morses had to assess the lending to check if Mr P 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've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr P'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 P. These factors include:

- Mr P 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 P 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 P 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 P.

Morses was required to establish whether Mr P 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 P 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 P's complaint.

Loans 4 and 5

Looking at everything I've been given about these loans, I do think Morses shouldn't have approved them.

I'm satisfied that by these loans, at the minimum Moses checks needed to go further than solely relying on Mr P's income and expenditure as well as information from the credit reference agency.

Given the time in debt, the amount Mr P was borrowing and the fact that it took Mr P more than twice as long to repay loan 3 as the contracted term, which to me suggests Mr P was likely having financial difficulties as he wasn't in a position to repay his loans in a sustainable manner.

However, it wasn't enough, as for the loan repayments to be pound and pence affordable. Moses also had to consider overall pattern of its lending history with Mr P, with a view to seeing if there was a point at which Moses should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Moses should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mr P's case, I think that this point was reached by loan 4. I say this because:

- At this point Moses ought to have realised Mr P was not managing to repay his loans sustainably. Mr P had taken out three loans in this chain of lending within 26 months So Moses ought to have realised it was more likely than not Mr P was having to borrow further to cover a long term short fall in his living costs.
- Mr P had shown that he'd had problems repaying his previous loan. It had taken him 77 weeks to repay loan 3, when he was contracted to repay it within 33 weeks. I think, the fact this had happened on each loan was an indication that he was struggling to meet his weekly commitment.
- Mr P was potentially extending his indebtedness with loan 4 to Moses for another year, which isn't an insignificant period of time.
- From the first loan, Mr P was generally provided with a new loan shortly after the previous loan had been repaid.
- Mr P wasn't making any real inroads to the amount he owed Moses. Loan 5 was taken out three years after Mr P's first loan. And his final loan was for seven times the amount of his first. Mr P had paid large amounts of interest to, in effect, service a debt to Moses over an extended period.

I think that Mr P lost out because Moses provided loans 4 and 5 because:

- these loans had the effect of unfairly prolonging Mr P's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time
- the number of loans and the length of time over which Mr P borrowed was likely to have had negative implications on Mr P's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So, I'm upholding the complaint about loans 4 and 5, and I've outlined below what Moses' needs to do in order to put things right for Mr P.

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 provided loans 4 and 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 P 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 P 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 P 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.

Moses shouldn't have provided loans 4 and 5 and I'm directing Moses to do the following.

If Moses has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If Moses isn't able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

- A. Moses should add together the total of the repayments made by Mr P towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything you have already refunded.
- B. Moses should calculate 8% simple interest* on the individual payments made by Mr P which were considered as part of "A", calculated from the date Mr P originally made the payments, to the date the complaint is settled.
- C. Moses should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr P as though they had been repayments of the principal towards the loan. If this results in Mr P having made overpayments then Moses should refund the overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Moses 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 P. However, if there is still an outstanding balance then Moses should try to agree an affordable repayment plan with Mr P.
- E. The overall pattern of Mr P's borrowing for loans 4 and 5 means any information recorded about them is adverse, so Moses should remove the loan entirely from Mr P's credit file. Moses doesn't have to remove loan 5 from Mr P's credit file until it has been repaid, but Moses should still remove any adverse information recorded about the loan.

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

My final decision

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

Moses Club PLC should put things right for Mr P as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 12 October 2022.

Robert Walker
Ombudsman