

The complaint

Ms M complains (through a representative) that Morses Club PLC (Morses) didn't carry out proper affordability checks before it advanced her loans.

What happened

Ms M took four loans between May 2018 and March 2019. 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	08/05/2018	14/08/2018	20	£15.00
2	£500.00	14/08/2018	14/03/2019	33	£25.00
3	£100.00	27/11/2018	outstanding	33	£5.00
4	£600.00	14/03/2019	outstanding	33	£30.00

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 Ms M's weekly commitment was £30.

Ms M has had some problems repaying her final two loans and Morses has confirmed an outstanding balance remains due.

Morses considered Ms M'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 her complaint.

Ms M's representatives didn't agree with the outcome reached by Morses and her representative referred the complaint to the Financial Ombudsman Service.

The complaint was considered by an adjudicator who thought a reasonable decision to lend had been made for loans 1 and 2. But in the adjudicator's view, loans 3 and 4 ought to not have been granted because the portion of Ms M's income that would have to be used to make the repayments was too high and therefore the loans were likely to be unsustainable.

Morses disagreed with the adjudicator's recommendation and I've read and considered what it said.

Ms M's representative confirmed that Ms M agreed with the proposed outcome.

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

Morses had to assess the lending to check if Ms M could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Morses' checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Ms M'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 Ms M. These factors include:

- Ms M 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);
- Ms M 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);
- Ms M 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 Ms M.

Morses was required to establish whether Ms M could sustainably repay the loans – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Ms M was able to repay her 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 Ms M's complaint.

Ms M agreed with the outcome that the adjudicator reached and Morses hasn't disagreed with the adjudicator's assessment about loans 1 and 2. Therefore, these loans are no longer in dispute so I no longer think I have to make a finding about them. But I have kept these loans in mind when thinking about the overall lending relationship.

Instead, this decision will focus on whether Morses was right (or wrong) to have advanced loans 3 and 4.

For loan 3 Ms M declared she had a weekly income of around £246 with outgoings of around £146. This left around £100 per week to make her weekly repayment of £5. Morses had already, in the assessment factored in the £25 weekly repayment due for loan 2. Overall, for loan 3, Ms M had a weekly commitment to Morses of £30.

For loan 4, Ms M declared her weekly income had slightly increased to around £254 and her declared weekly expenditure was around £115. Leaving just over £139 to a week to afford the loan repayments of £30 per week. Again, the weekly repayment for loan 3, was factored into Ms M declared expenditure. The total commitment to Morses, after loan 4 was advanced was £35

For both of these loans, Morses knew that Ms M's income was made up of salary as well as benefits. Morses says it saw evidence of Ms M's income but it hasn't provided the Financial Ombudsman with the evidence that it saw.

Morses did carry out a credit check search before the first loan was granted, but no further credit checks were carried out after this. Given, there is no regulatory requirement for credit checks to be carried out before each loan. So, the fact one wasn't carried out isn't something I can conclude is an error on the part of Morses. But, as I've said above, Morses needed to carry out proportionate checks.

However, in saying that I don't think, given what I've seen that Morses made a fair decision when it decided to lend loans 3 and 4 to Ms M. I'm, therefore, upholding Ms M's complaint about them.

As Morses has pointed out in response to our adjudicator, Ms M was committed to spending 12% of her income when loans 2 and 3 was advanced and 21% of uncommitted expenditure when loans 3 and 4 were advanced. In my view these payments in this case were too high when considering what it knew about Ms M's circumstances.

In these circumstances, there was a significant risk, that Ms M wouldn't have been able to meet her existing commitments without having to borrow again. So, I think it's unlikely Ms M would've been able to sustainably meet her repayments for these loans. Which, moving forward was shown, by the fact that Ms M has struggled to repay both of these loans.

I say this because Ms M was making a commitment to pay Morses for another 33 weeks for each loan and I think it's fair to say that Ms M's income was modest and partially made up of benefits.

On top of that, the information Morses was given suggested her income remained broadly similar and her other expenditure costs couldn't have been accurate because the information from the credit report (before the first loan) suggested that Ms M had around £1,700 of outstanding credit, so the £15 per weekly repayment declared was unlikely to be sufficient to service this debt.

So, I think, given the concerns I have about the expenditure information Ms M provided along with what else Morses knew about her meant, in my view loans 3 and 4 were unlikely to be sustainable.

While Morses 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 Morses 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 – I will always look at the broader circumstances – as I've done here.

I'm not suggesting that just because Ms M had a modest income which was likely made up from benefits and salary that funds couldn't be lent to her but what Morses needed to do is

appreciate that taking into account the commitments that she had to it and over the time period was in my view not sustainable.

I've considered what Morses 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 Morses also had to consider whether the loans were sustainable and I don't think, in this case it did that.

Based on what I've seen I'm upholding Ms M's complaint about her final two loans and I've outlined below what Morses needed to do in order to put things right.

Putting things right

In deciding what redress Morses' should fairly pay in this case I've thought about what might have happened had it not given Ms M loans 3 and 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 Ms M 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 Ms M 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 Ms M 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 Ms M loans 3 and 4.

If Morses have sold the outstanding debts it should buy these back if it is able to do so and then take the following steps. If Morses isn't able to buy the debts 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 Ms M 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 Ms M which were considered as part of "A", calculated from the date Ms M 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 M as though they had been repayments of the principal on the outstanding loans. If this results in Ms M 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 M. However, if there is still an outstanding balance then Morses should try to agree an affordable repayment plan with Ms M. But I’d remind Morses of its obligation to treat Ms M fairly and with forbearance – if needed.
- E. Morses should remove any adverse information recorded on Ms M’s credit file in relation to loans 3 and 4.

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

My final decision

For the reasons I’ve explained above, I’m upholding Ms M’s complaint in part.

Morses Club PLC should put things right for Ms M as I’ve directed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms M to accept or reject my decision before 12 October 2022.

Robert Walker
Ombudsman