

The complaint

Mrs W complains that Morses Club PLC (Morses) gave her loans that she couldn't afford to repay because it failed to carry out proportionate checks.

In addition, Mrs W also says that Morses encouraged her to take out further credit, didn't provide any assistance when she told it about her financial difficulties, and she was penalised for making late payments.

What happened

Mrs W was advanced three home collected loans between May 2021 and November 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	£250.00	17/05/2021	outstanding	35	£12.50
2	£300.00	16/08/2021	outstanding	35	£15.00
3	£300.00	02/11/2021	outstanding	35	£15.00

Mrs W had some problems repaying these loans, and she provided the Financial Ombudsman with a copy of a letter that shows in August 2022 Morses assigned the rights to the loans (and outstanding balances) to a third-party collection agency.

The 'weekly repayment' column in the table above is the cost per week per loan. Where loans overlapped the cost per week was increased, for example when loans 1 - 3 were running at the same time Mrs W's weekly commitment to Morses was £42.50.

Following Mrs W's complaint Morses wrote to her to explain that it wasn't going to uphold her complaint. Mrs W didn't accept the outcome and referred the complaint to the Financial Ombudsman Service.

An adjudicator reviewed the complaint and she partly upheld it and she didn't think any of the loans should've been granted. She explained, that Morses carried out a credit search before loan 1, and the results ought to have alerted it to the fact Mrs W was having difficulties – after all, it was aware that Mrs W had 10 defaults recorded on her credit file.

In order to put things right, the adjudicator asked Morses to refunded interest fees and charges and just collect the capital balance which was lent.

She didn't uphold any other parts of Mrs W's complaint. The adjudicator explained, that while the agent had offered further loans to Mrs W, she could see from the messages that the agent did give Mrs W the option as to whether she wanted to proceed with them (or not).

The system notes show that after Morses was told about Mrs W's financial situation it put her on a reduced and temporary plan. In the adjudicator's view, she thought this was Morses treating Mrs W fairly.

In respect of Mrs W's final complaint point, the adjudicator couldn't see any evidence that Mrs W had been penalised for late payments, for example there are no later fees added to this type of credit and the agent seemed to offer Mrs W the option to make up payments the following week if and when a payment were missed.

Mrs W appeared to accept the findings the adjudicator reached, although she did have questions about whether it was right for Moses to have passed the outstanding balances to a third-party collection agency while her complaint was being investigated. The adjudicator confirmed at this point, that it wasn't unusual for accounts to be sold.

Moses agreed with the recommendation that the adjudicator made. It explained that currently Mrs W's outstanding balance was £850 but only £352.17 of it was capital. It explained that the interest Mrs W had paid was around £150 (after 8% simple interest was added (and tax deducted)). Moses explained, that this would then be used to offset Mrs W's capital balance of £352.17 leaving a total amount left to pay of £201.34.

This offer was then put to Mrs W, who didn't accept it. Across, a number of emails, she made a number of points including:

- Mrs W was expecting a refund to be paid to her.
- She can't afford to pay any outstanding balance.
- A web link was provided to an online article about the profit warnings issued by Moses.
- This has caused her considerable stress.

The adjudicator went back to Mrs W to explain that a refund would only be due if Mrs W had repaid more than the capital sum, she had borrowed so she thought the offer by Moses was reasonable. She didn't think her view of the complaint needed to be changed.

Mrs W didn't agree and asked for her case to be passed to an ombudsman for a 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.

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.

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

- Mrs W 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);
- Mrs W 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);
 - Mrs W 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 Mrs W.

Morses was required to establish whether Mrs W 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 Mrs W 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 Mrs W's complaint.

It seems to me that both Mrs W and Morses accept these loans shouldn't have been provided. Indeed, Morses has made an offer to settle the complaint. So, I don't think there is any ongoing disagreement about whether these loans should've been lent.

But, in summary and for completeness, I don't disagree with what the adjudicator said, considering the results of the credit checks Morses carried out showed significant adverse information including 10 accounts being marked as being in default. Knowing that, I think there was a real risk that Mrs W wouldn't be in a position to sustainably make her loan repayments.

I've also considered the other aspects of Mrs W's complaint, and I again, I agree with the conclusions that the adjudicator reached. The notes do show, that after Mrs W approached Morses for help, it offered a repayment plan and the agent also confirmed this would affect Mrs W's credit file. The screenshots of the text messages show that Mrs W accepted this and agreed with the plan. So, I don't think there is anything else Morses needs to do in order to put things right about any other aspect of the complaint that were considered and dealt with by the adjudicator.

Again, I can understand why she is unhappy that Morses passed the loan to a third-party collection agency while her complaint was being investigated. However, it isn't unusual, and Morses can take action it deems is needed. In short, the Financial Ombudsman's involvement isn't an automatic block to it carrying out further collection activity, although I would say is some lenders may not carry out any activity while loans are being investigated.

Is the compensation fair?

Instead, this decision will focus on the redress and whether what Morses has agreed to pay is fair and reasonable. I understand, given Mrs W's comments following the adjudicator's assessment that she can't repay the balance. In effect, I take it she wants the outstanding balance written off.

To start with, when a complaint is upheld – as is the case here, the Financial Ombudsman, as far as possible aims to put a consumer back into the position they would've been in had the loans not been granted. But in cases of unaffordable lending that isn't always possible because a consumer has had money, and in some way benefited from it. So, it isn't always as simple as asking for the funds to be returned to Mrs W because they have been used.

Therefore, I have to consider what is fair and reasonable. Overall, I think it's fair that Mrs W shouldn't need to repay any more than the capital sum she has borrowed. So Mrs W shouldn't have charged her any interest, fees and charges on these loans. In effect, the loans granted to Mrs W should become interest free lending. Therefore, in this case, Mrs W needs to repay Mrs W no more than £850.

So if the loans have been taken out and fully repaid, it is more straightforward to compensate someone, because the Financial Ombudsman is able to direct a lender to refund the interest, fees and charges which have been paid and then to add 8% simple interest to those sums. Whatever that sum is, it is paid directly to the consumer.

However, if loans haven't been repaid (or there is an outstanding balance), the starting point is to remove from the balance any interest which has been added but not yet repaid – because it doesn't need to be repaid.

Once this is done, then we'd expect any payments made Mrs W to go towards the capital sums that were lent. Meaning Mrs W can't use the payments Mrs W has made to put it towards interest or fees that it may have charged.

If and when on any loan, Mrs W had paid enough to repay the capital amount borrowed than in my view it is entirely reasonable for Mrs W to use any refund (along with 8% simple interest) to offset any other balance which remains due.

In this case, looking at the statement of account, Mrs W hasn't paid enough to Mrs W to repay the capital sums she borrowed. As this is the case, there wouldn't be anything due to her. But, as I can see from Mrs W's calculations her outstanding balance could be significantly reduced – which is what I would expect to happen.

I appreciate Mrs W says she can't afford to repay the new outstanding balance, but no further information has been provided about her circumstances, which may be relevant to any consideration about what happens with the loan balance.

In addition, the redress Mrs W has offered to carry out is fair and reasonable in the circumstances of this case and it doesn't have to pay any more beyond what it has already offered to do. The exact amount of refund may change slightly, because there is an element of 8% simple interest in the calculation and this changes on a daily basis.

However, as an outstanding balance remains, either Mrs W or the third party will have to treat Mrs W fairly and with forbearance – this is especially so as it is now aware Mrs W says she can't afford to repay the loans. There are a number of options available to either party in order to assist Mrs W to repay what is owed, for example a payment plan.

It is of course possible that if Mrs W feels she has reasons for the balance to be written off than this could be something for either Mrs W or the third party to consider – but to be clear, I am not recommending this as a way of resolving the complaint because in my view the redress Mrs W has offered to pay is fair and reasonable.

I appreciate Mrs W has provided a link to a news article about profit warnings from Moses. But Moses' profit warning, in this case, doesn't have any bearing on whether the redress it has offered is fair and reasonable, considering the amounts that were lent and how much Mrs W has already repaid it.

It is worth saying that Moses hasn't indicated what will happen with the balance, if the decision is accepted. I don't know whether Moses may buy the debts back and then carry out the redress and then work with Mrs W to repay what is owed.

Or, whether Moses will liaise with the third party to make sure it only collects the correct outstanding balance. I don't have an answer to this, and I don't need one in order to reach a fair outcome because it is fair for Moses to do either option.

I've also thought about what Mrs W says about this being a stressful time for her, but I've not seen enough to make me think that in this case, Moses needs to pay any further compensation.

I understand that this decision will come as a disappointment to Mrs W, but I would remind her that an outstanding balance still remains due and she may want to discuss her financial situation with either Moses or the third party in order to find an agreeable way forward.

Finally, I would, again remind Moses of its obligation to treat Mrs W fairly and with forbearance when discussing a way forward. There are options open to it such as setting up a repayment plan and / or it could (if it wishes) write off the balance. But that would be a separate matter for Moses to consider and is not something, that in this case, I am recommending happen.

Putting things right

I've outlined below what Moses should to put things right, and what it has already agreed to do in order to put things right for Mrs W.

Moses shouldn't have provided any of the loans. If Moses has sold the outstanding debts it should buy it back if Moses is able to do so and then take the following steps. If Moses is not able to buy the debts back then Moses 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 Mrs W towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Moses have already refunded.
- B. Moses should calculate 8% simple interest* on the individual payments made by Mrs W which were considered as part of "A", calculated from the date Mrs W 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 Mrs W as though they had been repayments of the principal on all outstanding loans. If this results in Mrs W having made overpayments then Moses 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. 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 Mrs W. However, if there is still an outstanding balance then Moses should try to agree an affordable repayment plan with Mrs W.

E. Morses should remove any adverse information recorded on Mrs W's credit file in relation to all of these loans.

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

Mrs W has said that she will struggle to repay the balance but I'd remind Morses of its obligation to treat Mrs W fairly and with forbearance.

My final decision

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

Morses Club PLC should put things right for Mrs W as directed above.

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

Robert Walker
Ombudsman