

The complaint

Ms S, through a representative complains that Morses Club PLC (Morses) didn't carry out proportionate affordability checks before it granted her loans.

What happened

Ms S was advanced nine home collected loans between November 2018 and February 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	£100.00	02/11/2018	08/03/2019	20	£7.50
2	£150.00	11/01/2019	23/08/2019	33	£7.50
3	£100.00	08/03/2019	28/05/2019	20	£7.50
4	£200.00	28/05/2019	03/12/2019	33	£10.00
5	£150.00	23/08/2019	21/04/2020	33	£7.50
6	£250.00	03/12/2019	08/06/2020	34	£12.50
7	£400.00	08/06/2020	08/02/2021	34	£20.00
8	£150.00	10/11/2020	sold	34	£7.50
9	£400.00	08/02/2021	sold	34	£20.00

Ms S had some problems repaying loans 8 and 9 and Morses' statement of account shows these loans were sold to a third-party collection agency in October 2021.

The weekly repayment column is the cost per week per loan so where loans overlapped the cost will be greater. For example, when loans 1 and 2 overlapped Ms S' commitment to Morses was £15 per week.

Following Ms S's complaint Morses wrote to her representative to explain that it was going to partly uphold the complaint. Morses said, that it didn't think it had made an error when providing loans 1 – 6. However, it did agree to pay compensation for loans 7 – 9. Ms S's representative didn't agree with the offer and referred the complaint to the Financial Ombudsman Service.

After the complaint was referred to the Financial Ombudsman, Morses agreed to put things thing right for Ms S in relation to loans 6 – 9. This offer was then put to Ms S' representative.

Ms S didn't accept this offer, in summary she said.

- The offer was too low, considered that her partner had received more compensation from Morses.
- Ms S says her partner was dealt with the repayments towards her loans due to her health.
- Ms S let us know that she has mental health problems.

The adjudicator then reconsidered the complaint and issued a formal assessment of the complaint. She thought Moses had made a reasonable decision to provide loans 1 and 2 and so she didn't uphold Ms S's complaint about them.

By the time of loan 3, Ms S' income had reduced so the adjudicator thought, given loan 2 was still outstanding at the time, then for this and all future loans Moses' checks needed to go further. In the adjudicator's view it ought to have been verifying the information Ms S had provided.

However, as the adjudicator didn't have a copy of either Ms S' bank statements or a full copy of her credit report she wasn't able to say what Moses may have discovered had it made better checks. Therefore, she wasn't able to uphold Ms S' complaint about these loans.

The adjudicator didn't review loans 6 – 9 because Moses had already agreed to put things right for Ms S.

Finally, the adjudicator explained that she couldn't comment on Ms S' partner's redress as each complaint is based on its own individual circumstances and that any complaint about the actions of the agent – given this was new information and potentially a new complaint - would need to be taken up with Moses directly as a new issue.

Ms S' representative told the Financial Ombudsman that Ms S wasn't accepting the proposed outcome. It then explained there wasn't an outstanding balance to pay and it provided some screen shots of her credit file which it considered showed this.

The adjudicator approached Moses to ask about the outstanding balances and Moses confirmed the balance had been sold to a third-party collection agency and an outstanding balance remained due. Later it confirmed, that as of April 2022 Ms S owed a total of £668 (this includes unpaid interest and capital) The adjudicator then communicated this to Ms S' representative, and no further comments were provided.

The case was then passed to an ombudsman to make a decision about the complaint.

Before issuing this decision, I asked the adjudicator to contact both Ms S and Moses to ask for some further information about the complaint.

Ms S provided some further details about both her physical and mental health at and during the time the loans were granted these included details of medication and how her health impacts her daily life.

Ms S also confirmed that the third party who was sold the outstanding debts isn't reporting anything on her credit file. Later, Ms S provided some further screen shots of her credit file to demonstrate this.

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 Ms S 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 Ms 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 Ms S. These factors include:

- Ms S 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 S 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 S 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 S.

Moses was required to establish whether Ms S 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 S 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 S's complaint.

Loans 1 and 2

The adjudicator didn't uphold these loans because in her view Moses carried out proportionate checks and the checks showed that Ms S could afford her repayments. Having looked at everything I agree, with the adjudicator's assessment and I've explained why below.

Moses asked Ms S about her income for both loans, and she declared she was in receipt of benefits, receiving at least £107 per week, and after her outgoings Moses believed that Ms S had at least £62.50 to make her repayment of no more than £7.50. These loans therefore looked affordable.

A credit check was also carried out (before loan 1 only), and the results of this check have been provided to the Financial Ombudsman. Having reviewed the results there wasn't anything that would've given Moses cause for concern such as County Court Judgements, defaults or delinquent accounts.

Overall, the income and expenditure information along with the credit checks shows that Ms S was likely to be able to afford her loan repayments. Moses was entitled to rely on the information it was given and so a proportionate check, in my view was carried out.

I do not uphold Ms S' complaint about these loans.

Loans 3 - 5

For these loans, the adjudicator thought Moses ought to have carried out further checks – but as she didn't have anything from either Ms S or her representative about her actual financial position at the time, she wasn't able to uphold the complaint about these loans.

I've thought about everything that has been said and I do think further checks needed to have been carried out before these loans were approved. I agree, and I've explained why below.

For each of these loans, Moses took details of Ms S' income and expenditure details. Her income in this period fluctuated between £103 and £146 per week and Moses does appear to have been aware the sole source of income was from benefits.

Based on her expenditure and her commitments to Moses – Ms S appeared to have just about enough money to be able to afford her weekly commitment. Especially as according to the statement of account, there didn't appear to have been any missed payments or payment problems.

But given the irregular income amounts, the source of the income, the fact that Ms S was returning for new loans usually on the same day that a previous loan was repaid ought to have prompted Moses to consider whether it knew enough about Ms S' true financial position.

I therefore think it would've been reasonable for Moses to have carried out further checks to have verified the information Ms S provided about her income and expenditure information. This could've been done in several ways, such as asking for evidence of her outgoings, or looking at bank statements and/or Ms S' full credit file or any other documentation Ms S could've provided.

However, that isn't the end of the matter. For me to be able to uphold the loan, I have to be satisfied that had Moses carried out what I consider to be a proportionate check it would've likely discovered that Ms S couldn't afford these loans.

Ms S' representative hasn't provided a full copy of her credit file but screen shots of parts of the credit file have been provided. However, what these screen shots show are Ms S' current commitments to things such as mobile phone contract. What I don't know, (because the screen shots don't provide that information) is the start date of the credit – so whether it was outstanding at the time these loans were granted and if so, what Ms S' commitments were. So, while I have been given some information, in this case it isn't enough to be able to uphold these loans.

On top of this, we haven't seen copy bank statements covering the period leading up to these loans being advanced. Without anything further, I can't be sure what Moses may have seen had it carried out better checks. So, I can't fairly uphold the complaint about loans 3 – 5 either.

Loans 6 – 9

Moses has already accepted that something went wrong when these loans were approved because it has made an offer to pay compensation to Ms S. As Moses has offered to pay

compensation then there is no longer any dispute as to whether these loans ought to have been approved.

As of August 2022, Morses says the refund will repay the balances Ms S owes on loans 8 and 9 and then with 8% simple interest as well as tax deducted this would leave an amount of £232 to be paid directly to Ms S.

I've therefore not investigated these loans further, but I've included below, in the 'putting things right' part of my decision, what Morses needs to do in order to put things right for Ms S.

Morses' statement of account does show that there was an outstanding balance that has been sold to a third party. Ms S says this isn't reflected in her credit file and that the balance may have been repaid.

However, the screen shots that have been provided about some Morses accounts only show that they are closed. There also isn't any information about the start date, so it's possible that these Morses loans that I've seen in the screen shots are earlier loans that Ms S was able to successfully repay. So, the screen shots don't change my view that an outstanding balance remains.

In addition, I've also not been provided with any information which suggests Ms S has repaid the third party directly. If Ms S has repaid the third party then that will be reflected in the refund Morses is due to make.

However, based on the information that has been provided and as part of what Morses needs to do in order to put things right it can deduct from any refund the amount of outstanding capital that is due (if relevant). This is entirely consistent with the approach the Financial Ombudsman takes when asking a lender to put something right.

Other considerations

I appreciate that part of Ms S' unhappiness with the offer Morses has made is down to her partner's complaint and the redress they received. What I would add is that each case is based on its individual circumstances. Any outcome is based on a number of factors – such as but not limited to the number of loans, value of those loans, the term and what the lender knew about borrower at the time.

Therefore, it isn't appropriate for me to comment on what Ms S' partner may have received. But taking the individual circumstances of this case as well as the evidence with which I've been provided, upholding loans 6 – 9 is a fair and reasonable outcome.

Firstly, I'd like to thank Ms S for her candour and for providing me with all the information I asked for about the nature of her health problems. I appreciate that it may not have been easy for her and it's clear, from what she told me that she's had a difficult time. I do hope that her situation improves.

But I do now, have a fairly clear idea of the problems Ms S faces. Given these were home collected loans, I do think it's likely that the agent ought to have been aware of Ms S' physical problems especially in light of the comments she's provided about the adaptations that have been made to her home.

However, after making further enquiries with Morses it says there isn't anything noted on the systems about Ms S' health problems and or how that may impact in her taking these loans. But that doesn't mean Morses ought to not have been aware of Ms S' health conditions – as

I've said at the very least given what Ms S has said – Moses ought to have been aware of the reason why she was in receipt of benefits.

It also seems, based on the information that Moses provided that it was aware of Ms S was in receipt of benefits. But that doesn't mean Moses shouldn't or couldn't approve the loans for her.

The guidance – contained within the Consumer Credit Sourcebook does provide guidance as to how a lender deals with mental capacity issues – as Ms S has suggested because her partner paid her loans. But, the guidance is clear that this doesn't mean (if Moses was aware) that it shouldn't automatically decline the loan(s). Indeed, the guidance says;

CONC 2.10.9G

(1) A firm should not unfairly discriminate against a customer who it understands, or reasonably suspects, has a mental capacity limitation, in particular, by inappropriately denying the customer access to credit

Having weighed everything up in this case, I can't say that Moses was automatically wrong to have approved these loans, due to Ms S' health conditions. Although, as I've said above, it ought to have prompted it to have carried out further checks, but I don't have enough information to make a finding on what Moses may have discovered.

Ms S also says that her partner would sort out her payments – partially she says that she wasn't mentally capable of dealing with the loan repayments. I've asked Moses some further information about this and it has told us:

... the payments were usually made by card over the phone on a Friday and it was usually Ms S' [full name removed] partner who made the payments as he also had an account so paid them both at the same time.

So, it does seem that Moses, was, for some of the loans aware that Ms S' partner was making at least some of the payments towards them. But from Moses' notes and what it said above, it isn't clear whether these payments were made by her partner for convenience and or there was some other agreement between Ms S and her partner.

Given, the loans were paid on time – apart from the last two. I don't think, in this case, who paid the loans has made a difference. After all, Ms S is free to use the refund to offset any payments her partner made for her.

Putting things right

In deciding what redress Moses should fairly pay in this case I've thought about what might have happened if it hadn't lent loans 6 - 9, as I'm satisfied it ought not to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Ms S may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, she may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, she 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 she had done that, the information that would have been available to such a lender and how she 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 S in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Ms S would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Morses's liability in this case for what I'm satisfied it has done wrong and should put right.

Morses shouldn't have provided Ms S with loans 6 - 9.

If Morses has 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 S towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Morses has already refunded.
- B. Morses should calculate 8% simple interest* on the individual payments made by Ms S which were considered as part of "A", calculated from the date Ms S originally made the payments, to the date the complaint is settled.
- C. Morses should remove all interest, fees and charges from the balance on loans 8 and 9, and treat any repayments made by Ms S as though they had been repayments of the principal on these loans. If this results in Ms S 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 loans 8 and 9. If this results in a surplus then the surplus should be paid to Ms S. However, if there is still an outstanding balance then Morses should try to agree an affordable repayment plan with Ms S. Morses shouldn't pursue outstanding balances made up of principal it has already written-off.
- E. The overall pattern of Ms S' borrowing for loans 6 - 9 means any information recorded about them is adverse, so Morses should remove these loans entirely from Ms S' credit file. Morses do not have to remove loans 8 and 9 from Ms S' credit file until these have been

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

My final decision

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

Morses Club PLC should put things right for Ms S as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 22 December 2022.

Robert Walker
Ombudsman