

The complaint

Mr H, through a representative complains that Morses Club PLC (Morses) didn't carry out proper affordability checks before it lent to him.

What happened

Mr H was advanced two home collected loans between April and July 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	£300.00	29/04/2021	outstanding	35	£15.00
2	£300.00	26/07/2021	outstanding	35	£15.00

Mr H had some problems repaying loans 1 and 2 and as of 22 March 2022, a total outstanding balance of £560 remained.

Following Mr H's complaint Morses wrote to his representative to explain that it wasn't going to uphold the complaint. Mr H's representative didn't accept the outcome and referred the complaint to the Financial Ombudsman Service.

Our adjudicator, following contact with Morses, explained why in her view loan 2 shouldn't have been granted because a proportionate check would've shown a number of outstanding active loans and loan 1 was still being repaid.

Morses disagreed, with the outcome and so the adjudicator issued a formal assessment of the complaint. She once again said that loan 2 should be upheld because it was clear Mr H was having money management problems and had several loans outstanding loans with other lenders and he was also make a payment to a debt management company.

Mr H's representative told the adjudicator that Mr H accepted the proposed outcome.

Morses didn't accept the adjudicator's findings. I've summarised its response as below:

- Morses wasn't aware that Mr H was paying a debt management company.
- There was no requirement for a credit search to be carried out before loan 2 was granted.
- The amount of outstanding debt Morses was aware of with other lenders wasn't excessive.
- Morses did expect there to be some adverse credit file data on Mr H's credit file.
- Relevant checks were carried out before loan 2 was advanced.
- Mr H had sufficient disposable income to be able to afford his loan repayments.

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.

Morses had to assess the lending to check if Mr H 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' 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 R'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 H. These factors include:

- Mr H 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 H 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 H 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 H.

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

Both Mr H and Morses accept that a reasonable decision was taken when loan 1 was advanced. This loan is therefore no longer in dispute so I no longer need to make a finding on this loan – I say no more about it.

Instead this decision will focus on whether Morses made a reasonable decision to advance loan 2.

Loan 2

For this loan, Morses asked Mr H to declare his weekly income and his expenditure. He declared an income of £360 with outgoings of £251 leaving £109 per week in disposable income to afford the repayment of £15. Mr H's repayment for loan 1 had already been factored into his declared expenditure for loan 2.

Based solely, on the income and expenditure it was reasonable for Morses to have believed that Mr H would be able to afford the repayments.

However, in saying that, there were indicators in the information that Morses had that ought to have led it to carry out further checks – in order to make sure he was in a position to make these repayments.

A credit search wasn't carried out before this loan was approved, but before loan 1 was advanced one was carried out and given these results were available to Morses I consider it reasonable that these were considered as part of the assessment before loan 2 was approved, especially as this loan was only approved a few months after loan 1.

Contained within the results Morses knew that Mr H had 14 active credit facilities with owing nearly £15,000 – he had defaulted on 5 accounts but more than 12 months ago but only one had been settled. I think at least, the credit search results indicated that Mr H had historic payment problems, but still had a not insignificant amount of debt.

In addition, when loan 1 was approved, Mr H as part of his application declared he had around £118 per week of other credit commitments towards loans, credit cards and other home credit loans. For loan 2, this figure, as recorded by Morses, had decreased to £58 per week. This doesn't seem plausible given the results of the credit checks.

So, I don't think Morses carried out a proportionate check for loan 2 and had it done so – perhaps by reviewing bank statements from around the time this loan was approved, which have been provided by Mr H's representatives. I have reviewed those and show that he was making repayments to a debt management company as well as making 10 separate repayments to three different third-party debt recovery companies each month.

It also would've discovered that Mr H was already making repayments to two payday loan companies as well as high cost revolving credit facility – which was costing him around £500 per month to manage. He was also making repayments to a number of different catalogue shopping accounts.

Finally, he had to make a payment already to Morses of £15 per week for loan 1. I think Morses would've likely discovered all of this by carrying out a proportionate check. And knowing this I think it would've decided that Mr H wasn't in a position to take on any further lending due to him being over indebted and showing signs of having problems managing his money.

I'm therefore upholding Mr H's complaint about this loan.

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 provided loan two, 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 H 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 H 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 H 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 advanced loan two.

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

- A. Morses should remove all interest, fees and charges from the balance on loan 2, and treat any repayments made by Mr H as though they had been repayments of the principal for this loan. If this results in Mr R 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.
- B. If there is still an outstanding balance then the amounts calculated in "A" should be used to repay any balance remaining on any outstanding loans. If this results in a surplus, then the surplus should be paid to Mr H. However, if there is still an outstanding balance then Morses should try to agree an affordable repayment plan with Mr H.
- C. Morses should remove any adverse payment information recorded on Mr H's credit file in relation to loan 2.

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

My final decision

For the reasons I've explained above, I'm upholding Mr H's complaint about loan two.

Morses Club PLC should put things right for Mr H as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 2 November 2022.

Robert Walker
Ombudsman