

The complaint

Mr P complains (through a representative) that Morses Club PLC (Morses) didn't carry out proper affordability checks before it advanced his loans. Had it done so, Morses would've realised Mr P couldn't afford his repayments.

What happened

Mr P took three loans between October and December 2018. 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	02/10/2018	11/12/2018	20	£7.50
2	£100.00	06/12/2018	sold	33	£5.00
3	£150.00	11/12/2018	sold	33	£7.50

Morses' statement of account shows loans 2 and 3 were sold to a third party in November 2018. Morses says that as of March 2022 an outstanding balance of around £302 remained due.

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 1 and 2 were running at the same time Mr P's weekly commitment was £12.50.

Morses investigated the complaint and concluded it had made a reasonable decision to provide these loans and so it didn't uphold the complaint. Unhappy with this response, Mr P's representative referred the complaint to the Financial Ombudsman Service.

The complaint was considered by an adjudicator who thought a reasonable decision had been made by Morses to advance loan 1. However, he didn't think loans 2 and 3 should have been granted. In the adjudicator's view the portion of Mr P's income that would have to be used to make the repayments was too high and therefore the loans were likely to be unsustainable for him. The complaint was upheld about loans 2 and 3.

Morses disagreed with the adjudicator's recommendation to partly uphold the complaint. I've summarised its response below.

- Adequate affordability checks were completed before these loans were approved.
- For loan 2, Mr P provided evidence of the benefits he was in receipt of.
- It doesn't consider the loan repayments to be excessive.
- Mr P had sufficient disposable income to afford the loan repayments.
- When loan 3 was approved, Mr P's income was checked with a credit reference agency.
- There was only a six day overlap between loan 2 being granted and loan 1 being repaid.
- Mr P, up to loan 2 being approved had a good repayment history.

Neither Mr P or his representative acknowledged or provided any further comments following the adjudicator's assessment.

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 short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

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' checks could have 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.

Neither Mr P's representative nor Morses have disagreed with the adjudicator's outcome in relation to loan 1, so this loan, as far as I can tell, is no longer in dispute. So, I don't need to make a full finding about this loan. But for completeness given what was apparent about Mr P's circumstances a reasonable decision to lend was made.

Loans 2 and 3

For loan two Mr P declared his weekly income had decreased slightly from loan 1 to £120 and his declared weekly expenditure was £72.50 – which included the repayment for loan 1. This left, £47.50 per week to afford the loan repayment of £5 per week.

For loan three, Mr P's weekly declared income increased slightly to £127 with his weekly outgoings increasing to £77.50 – which included the loan repayment for loan 2. This left around £49.50 per week disposable income to afford the repayment on this loan of £12.

For loan 2, Morses has recorded that Mr P was in receipt of benefits and it saw some evidence of this. It's worth saying again that Morses hasn't provided the information that it saw or provided details of the type of benefit evidence that was provided.

Morses says for loan 3 it also carried out an income verification check, which given my understanding of Morses' processes was done through a credit reference agency. Although, no details about this check, including the results that Morses saw have been made available to the Financial Ombudsman.

Before loan one was granted Morses also carried out a credit check and it has provided the results of that search. There is almost no information contained within the results, so either the results have been corrupted and / or not complete or the information suggested that Mr P had almost no credit history. The only thing I can say for certain is that Morses was aware Mr P didn't have any County Court Judgements.

However, in saying that I don't think, given what I've seen, that Morses made a fair decision when it decided to lend these loans to Mr P. I'm, therefore, upholding Mr P's complaint about loans 2 and 3.

Considering the information Mr P provided about his income and expenditure, Morses may have felt, these loans were pounds and pence affordable because this is what the information showed. However, as I've explained above, that is only part of what Morses had to consider before granting these loans.

As Morses has pointed out in response to our adjudicator, Mr P was committed to spending nearly 11% servicing his debt when loans 1 and 2 were outstanding and 10% of his income when loans 2 and 3 were outstanding. In my view these payments in this case were too high when considering what it knew about Mr P's circumstances.

In these circumstances, there was a significant risk, in my view that Mr P wouldn't have been able to meet his existing commitments without having to borrow again. So, I think it's unlikely Mr P would've been able to sustainably meet his repayments for these loans.

I say this because Mr P was making a commitment to pay Morses for 33 weeks for each loan and I think it's fair to say that Mr P's income was modest and potentially made up solely of benefits. On top of that, the information Morses was given suggested that with each loan his income remained broadly flat. In addition, Morses knew from the expenditure information Mr P declared was quite low and really only had utilities, food and some other credit commitment of £10 a week that we don't have details for. So, I think, that Morses ought to have realised that for example a weekly shop of £25 is modest, so his living costs are likely to be greater than he declared.

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 – we'll always look at the broader circumstances – as I've done here.

I'm not suggesting that just because Mr P had a modest income which was likely made up solely from benefits that funds couldn't be lent to him but what Morses needed to do is appreciate that taking into account the commitments that he 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.

In addition, I've thought about the overlap between loans 1 and 2. While this was only for six days, Morses wouldn't have known that loan 1 would be repaid so quickly when it approved loan 2. Therefore, this makes no difference to my thinking about the complaint.

Based on what I've seen I'm upholding Mr P's complaint about loans 2 and 3 and I've outlined below what Morses needed to do in order to put things right.

Putting things right

I would say here that in the final response letter Morses says both loans 2 and 3 had been repaid. Whereas, the information that it has sent us, as well as its cover email does show the loans were sold to a third party and as far as Morses is aware an outstanding balance remains.

In deciding what redress Morses should fairly pay in this case I've thought about what might have happened had it not lent to Mr P from loan 2, 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 Morses' liability in this case for what I'm satisfied it has done wrong and should put right.

Morses shouldn't have given Mr P loans 2 and 3.

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 is not 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 Mr P 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 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. Morses 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 on all outstanding loans. If this results in Mr P 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 Mr P. However, if there is still an outstanding balance then Morses should try to agree an affordable repayment plan with Mr P. Morses shouldn't pursue outstanding balances made up of principal it may have already written-off.
- E. Morses should remove any adverse information recorded on Mr P's credit file in relation to loans 2 and 3.

*HM Revenue & Customs requires you to deduct tax from this interest. Morses should give Mr P a certificate showing how much tax it 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.

Morses Club PLC should put things right for Mr P as I've directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 18 November 2022.

Robert Walker
Ombudsman