

## The complaint

Mr A complains that Morses Club PLC lent to him irresponsibly.

Mr A also complains that the breathing space period he agreed with Morses, alternatively he was in (pursuant to regulations), was breached by Morses in that it sent to him a notice of intended default.

## What happened

Mr A was approved for one loan for £300 on 25 November 2021 over a 35 week term with repayments agreed at £15 each week. The interest payable on the loan was £225.

Looking at the statements of account for this loan it seems that Mr A had paid most of the capital off by the time he complained on 1 May 2022. His complaint form does seem to recognise that he did owe Morses the capital. There does not appear to have been any arrears on the account until after Mr A complained. Payments ceased on 30 April 2022 after which Mr A cleared the debt on 5 July 2022 with a bulk payment of £253.56. The account was settled and closed. Mr A wanted the interest to be waived but now the account has been paid off it seems Mr A would like a refund of the interest on the account.

Mr A states:

*'I also was contacted by their collections department and I requested breathing space on my account which I understood should prevent any further letters or phone calls however I was told no this was not the case and that collections procedures would still continue and I have still continue [sic] to receive arrears notices even after I have requested breathing space.'*

He says that he has experienced anxiety from the calls and the letters received. He'd like some redress for the misinformation he received in relation to the breathing space and the complaints process.

Morses sent to Mr A two final response letters (FRLs), the first dated 2 June 2022 in which it addressed the irresponsible lending part and it did not uphold his complaint. It said that Mr A's application history showed he had told Morses he earned just over £508 a week and his expenditure was just over £290 a week and so Morses calculated he had a disposable income of around £218 a week. So Morses had considered he could afford the £15 each week.

The second FRL addressed the issue surrounding the breathing space Mr A says has not been complied with. It was dated 29 July 2022.

That FRL listed some facts which are that:

- A 'scheduled action' was placed on Mr A's account at his request on 7 June 2022 until 8 July 2022. This was to prevent further calls to Mr A about the account status
- Regulatory notifications and sharing information about the account to the credit

reference agencies would continue

- After 30 days it could have been extended upon further discussion
- Morses' arrears notifications were an automated function and the wording used is generic text, the phrasing is not personal to the customer.
- Morses had a duty of care to send to the customer regulatory notifications on the account status
- Morses declined Mr A's complaint on this point.

The FRL for this part of Mr A's complaint (July 2022) said this –

*'We have a duty of care to send you the regulatory notifications to inform you of the status of your account. Our arrears notifications are an automated function and the wording used is generic text, the phrasing is not personal to you.'*

The irresponsible lending part of the complaint was referred to the Financial Ombudsman Service on 26 June 2022 and our adjudicator obtained information about the second part of Mr A's complaint in October 2022.

Our adjudicator looked at the complaint elements and did not uphold either part.

Following our adjudicator's view, Mr A did not accept that part relating to the irresponsible lending outcome. And in relation to that part about the breathing space, Mr A accepted a few elements.

He told us:

*'I agree that the credit reference agencies would still be updated, and regulatory letters would be sent'*

But Mr A continued to say that Morses' action to send him the Notice of Default was wrong. Mr A was not content and asked for an ombudsman to review both elements of the complaint.

The complaint was passed to me to decide and having reviewed it I asked both Morses and Mr A for additional information.

Mr A sent me a further email to explain he'd contacted a debt advice charity at the end of June 2022 which had advised him to ask all the companies with which he had debts for a breathing space.

Mr A sent to me the copy letter from Morses dated 3 July 2022 which was a Default Notice. It was requesting payment of £252.99 to clear the debt. It states '*before the date shown*' in bold but no date was inserted as the requested payment date.

Mr A has explained that he paid it off in full to avoid the default but he felt forced to do that and he says Morses ought not to have sent that Default Notice demand to him during the 30 day breathing space period.

Morses has sent to me two recorded calls for the 7 June 2022 both of which I have listened to. Morses also sent a copy of all the loan account notes since its inception, and a copy of a standard Default Notice letter. This also included the FCA Fact Sheet sent to customers with Default Notices which signposts customers as to what to do next and where to get advice.

The unresolved complaint was passed to me to decide and having got the information I needed I decided to issue a provisional decision on 10 November 2022.

In that provisional decision I gave reasons for not upholding Mr A's complaint about the irresponsible lending. But I also gave reasons as to why I did think that Morses had got it wrong issuing a Default Notice during the 30 day breathing space period. And so, I said I was planning to award Mr A a modest money award of £100.

I gave both parties time to respond.

### ***What has happened recently***

Mr A has responded to say that he had read all my provisional decision and agreed with it. I am grateful for such a quick response.

Morses has replied to say that it agrees with my provisional decision and again, I am grateful for the fact that the reply was earlier than the scheduled reply date.

It means that as both parties agree then I have drafted the final decision in the same terms and using the same reasoning to come to the same conclusion as my provisional decision. That is what follows here.

Both parties will reach resolution if Mr A accepts the final determination.

### **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.

### ***Irresponsible lending***

We've set out our general approach to complaints about high cost, short-term and home credit lending - including all the relevant rules, guidance, and good industry practice - on our website.

Morses had to assess the lending to check if Mr A 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 considered a number of different things, such as how much was being lent, the size of the repayments, and Mr A's income and expenditure.

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 A. These factors include:

- Mr A 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 A having many 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 A 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 A. Our adjudicator considered this to

be the case for Mr A. Morses was required to establish whether Mr A could sustainably repay the loans – not just whether he technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Mr A 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, 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 A's complaint. The irresponsible lending part I have decided not to uphold.

For a new customer to Morses and for a relatively modest request for £300 over a relatively short term of 35 weeks, I think that Morses carried out checks which were proportionate. I would not have expected it to have done more.

As well as obtaining Mr A's income and outgoings – the details about which I have been sent and were summarised in the 'what happened' part of this decision - he earned £508 a week and his expenditure was around £290 a week - Morses carried out a credit search.

I have been sent a copy of those search results and I have noted that Mr A had other debt and had several credit accounts. But there were no defaults, and there's no information to inform Morses Mr A was in any debt management plan or any repayment plans. I think Morses could see that Mr A may have been in arrears on some of the accounts. But, as our adjudicator outlined, Morses is a lender used to lending to individuals who may not have a perfect credit file history. And there's nothing on that credit file which – in my view – ought to have alerted it to do more than it did – such as any additional checks.

One section of the credit search results I have seen indicated that Mr A had only one active short term loan account as others appeared to have been paid off, the most recent being five months before Mr A applied to Morses. His delinquent accounts were to a value of £290 which was relatively low.

That credit search records also show that the total monthly payments on all Mr A's accounts excluding mortgages which were active at the time was £576 which translates to be about £132 a week.

On the information recorded when Mr A applied for the loan from Morses it had a weekly figure of £107 for 'other loans, credit cards and other credit'. So even if Morses had increased that figure by £25 a week (to make it up to £132 a week) and had increased some of the other items Mr A had declared to them, still I consider he would have been able to afford the loan on the income figure it had for him.

Listening to the recorded telephone call between Morses' representative from its arrears department and Mr A on 7 June 2022, there was a part on that call where Mr A accepted that he had taken the loan, that that he had taken it with interest and that he had 14 days 'cooling off' period as well. So, it seems Mr A was aware of the full nature of the loan he'd taken.

I think that Mr A was able to afford the loan on the information Morses had when he applied to it and I do not uphold the irresponsible lending part of Mr A's complaint.

## ***Breathing space***

### *The recorded calls on 7 June 2022*

Two recorded calls were sent to me by Moses after I had asked for them. They both took place on 7 June 2022, the first was when the arrears department called him at his place of work, and he asked to be called back later. That person did call back, and a conversation lasting about 18 minutes took place. It ended with Mr A and the arrears department agreeing to 30 days breathing space which could be reviewed and possibly extended for a further 30 days.

Mr A was making it very clear in that call that he'd paid the £300 principal and the rest would be paid off at the end of June 2022 as he knew he had to pay it off. But he was not content with the FRL he'd received from Moses (about unaffordability) and was going to take the complaint to the Financial Ombudsman Service.

I think that this call pre-dated the contact Mr A may have had with the debt advice charity as Mr A has said to us that was at the end of June 2022. Mr A had said to us that the debt advice charity was sending him a pack of details to complete. Whereas during the recorded call I heard that Mr A had done some research on the FCA (Financial Conduct Authority) website to discover about the 30-days or 60-days breathing space periods. I'll come back to these two sorts of breathing spaces later in the decision.

### *The sort of breathing space*

On 7 June 2022 I do not think that Mr A had registered with a debt advisor. So, for that reason and because I've seen no documentation to support it, I do not think that Mr A was in a formal Debt Respite Moratorium (the Moratorium') under the The Debt Respite Scheme (Breathing Space Moratorium and Mental Health Crisis Moratorium) (England and Wales) Regulations 2020 (the 2020 Regulations). These came into force on 4 May 2021.

And neither do I think that Mr A was asking for that Debt Respite Moratorium on the call on 7 June 2022 And I say this because having read the regulations these Moratoriums are available through a more formal process and through a debt adviser and have to be registered. And there are eligibility criteria.

I'd need to know more to decide whether Mr A was eligible for such a Moratorium. But I don't think that's necessary for this decision. I refer to it to demonstrate to both parties that I have thought about both kinds of 'breathing space' that Mr A may have been referring to in his call on 7 June 2022.

Mr A was correct that the FCA rules for regulated firms such as Moses do provide, and always have provided, for periods of forbearance which have been and still can be termed 'breathing spaces'. So, I think that is the sort of breathing space Mr A was asking for on 7 June 2022.

### *Some relevant regulations and rules*

I have read the FCA CONC rules covering this sort of forbearance, what a regulated firm can offer, what the customer can expect and how they work.

That 7 June 2022 call gave me these facts:

- Mr A was offered a 30 day forbearance period or breathing space

- that it could be reviewed in 30 days
- that the expiry date for that on my calculation would have been 7 July 2022 and Morses' FRL has said 8 July 2022
- that on the call in June 2022, Mr A was informed that Morses could still send regulatory letters to him and would still be reporting to Mr A's credit file that he was in arrears on the loan, but telephone calls to him would cease.

As I've outlined that I think the FCA rules apply, then here are some of the relevant rules on which I consider Morses acted. They are in the next paragraphs.

The FCA Principles for businesses include PRIN 2.1.1 (6) which says '*A firm must pay due regard to the interests of its customers and treat them fairly.*'

CONC 7.3.4 R '*A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.*'

CONC 7.3.5 G gives guidance with examples of treating a customer with forbearance. But the list of examples usually applies to customers who are not able to pay. Mr A had said in the 7 June 2022 call that he was going to pay at the end of the month (June 2022). So, CONC 7.3.5 may not be relevant here.

7. 3.6 G '*Where a customer is in default or in arrears difficulties, a firm should allow the customer reasonable time and opportunity to repay the debt.*'

And 7.4.1 R provides '*A firm must provide the customer or another person acting on behalf of the customer with information on the amount of any arrears and the balance owing.*'

And the Consumer Credit Act 1974 (CCA) and other subordinate legislation relating to the CCA, under which these Morses agreements are made, has many requirements about providing documentation to the customer and keeping the customer informed about his or her account and Morses is right about that. And CONC 13 also outlines the firm's responsibilities, although I don't think CONC 13 is entirely on point – meaning not entirely relevant to this complaint.

#### *My findings on the breathing space part of the complaint*

Mr A received a formal Notice of Default dated 3 July 2022 which was within the 30-day breathing space period and I do not think that was right. And whether the sending of the Notice of Default by Morses breached the breathing space period or not (because it may fall into the category of a regulatory letter), I think that Morses sent the Notice of Default too early. I will explain here why I think this.

Without getting into the exact parameters of what do and do not constitute '*regulatory letters*', which both parties have accepted are appropriate to send during a breathing space, listening to the telephone call of 7 June 2022, the arrears department representative made it clear that Morses would not expect a payment during the '*hold period*'.

An example of one of the sorts of regulatory letters was the one sent to Mr A on 12 June 2022 (AR1), a copy of which I have seen. It does not make any demand for payment. It gives ways to pay and clearly would have been recommending payment but it's not a demand.

And yet Morses went on to issue a Notice of Default in which it made it clear that Mr A was expected to pay a specific sum. It did not give a date. But the import of the letter was that a level of urgency was required and that there would be consequences which would arise from

a failure to pay.

And the Morses representative on 7 June 2022 had given the impression that the 30 days could be extended and the point of breathing spaces were to make sure both Morses and Mr A kept in touch. Whereas the Notice of Default was sent on 3 July 2022 which was before any moves were made to get back in touch with Mr A and before the 30 days had expired.

And I say this because I have reviewed the loan account notes which shows no attempt to do that although there was a note to say that the account needed to be reviewed after the temporary hold had ended on 7 July 2022: '*CRM to review 7/7*'.

By 3 July 2022, Mr A had been in arrears for some time. But it had not yet reached the three month mark which is usually when a lender may consider that a debt may not be paid. It had been just over two months at that point.

And relations between Mr A and Morses had not broken down as he had been in contact with them on 7 June 2022, he had told them he'd pay at the end of June 2022, he was in a 30 day forbearance period and so Morses could have called again to see how things were.

And although Mr A did not pay the full sum at the end of June 2022, still I think that issuing the Default Notice was done too early. Up to that point he'd only received a letter which Morses has labelled 'AR2' which I think was still relatively early in the arrears process.

And even if I am wrong on this point, I do think that it was unwarranted during a breathing space period to send to Mr A a Notice of Default considering that the Morses representative had said during the call on 7 June 2022 that it would not expect a payment during the '*hold period*.' I came to that decision on a fair and reasonable basis which was in my provisional decision and both parties have agreed with this. I uphold this part of Mr A's complaint.

### *Redress*

Turning now to what I think the impact was on Mr A was and therefore what I think would be fair compensation, I note from the 7 June 2022 telephone call that Mr A had said he was going to pay all the arrears, or pay off all the loan at the end of June 2022 and he knew he had to. He had also commented that he knew the Financial Ombudsman Service process may take time and so he knew it was better to pay off the loan and seek redress through the complaint process rather than retain the account in arrears.

So, although Mr A may have been prompted to pay the whole debt earlier than he says he wanted to pay, because he had received the Notice of Default, still I think, on the evidence I have, that he had always planned to pay it off. And since saying this in my provisional decision I've been sent nothing else or new to alter my view on that.

However, I don't think that the Default Notice was right and I do not think it was fair or reasonable of Morses to send that to Mr A when it did send it.

The impact on Mr A was likely more of a jolt than of a financial issue as he had said he was going to pay off the debt anyway, which suggests he had the means to do that. And he appears to have had the means as he did pay it off on 5 July 2022. And so, I do not consider that the compensation needs to be more than a modest payment of £100.

I uphold that part of Mr A's complaint relating to the Notice of Default.

### **Putting things right**

With the evidence I have, I consider that a modest compensation award of £100 is fair and reasonable. Since saying this in my provisional decision both parties have agreed to it.

I direct that Morses Club PLC pays an award to Mr A of £100.

### **My final decision**

My final decision is that I uphold Mr A's complaint in part and I direct that Morses Club PLC pays the award I have outlined in the 'putting things right' part of this decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 15 December 2022.

Rachael Williams  
**Ombudsman**