

## The complaint

Ms S complains Morses Club PLC (Morses) didn't check whether she could afford to pay back the loans which were granted to her.

## What happened

Ms S took five loans between November 2018 and March 2020. 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           | £200.00     | 30/11/2018     | 28/06/2019     | 33           | £10.00           |
| 2           | £150.00     | 22/03/2019     | 30/10/2019     | 33           | £7.50            |
| 3           | £200.00     | 28/06/2019     | 11/03/2020     | 33           | £10.00           |
| 4           | £300.00     | 30/10/2019     | outstanding    | 34           | £15.00           |
| 5           | £300.00     | 11/03/2020     | outstanding    | 34           | £15.00           |

The statement of account provided by Morses, which was last updated in September 2020 shows an outstanding balance remaining due for loans 4 and 5.

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 Ms S's weekly commitment was £17.50.

Morses considered Ms S's complaint and didn't uphold it. Ms S then referred the complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator who thought a reasonable decision to lend had been made for loans 1 - 3. But in the adjudicator's view, before loans 4 and 5 were granted Morses ought to have carried out more detailed checks including verifying the information Ms S had provided. Had it done so, it would've likely discovered Ms S was having problems managing her existing credit because the adjudicator could see a number of returned direct debit payments.

Morses disagreed with the adjudicator's recommendation and I've summarised its response below.

- Ms S borrowed what Morses considers to be low value loans.
- Ms S wasn't required to use excessive amounts of her income to meet the loan repayments.
- There was no set list of checks Morses needed to do before granting these loans and there was no requirement for it to check her bank statements.
- Proportionate affordability checks were completed before each loan.
- Loan 3 was repaid late, but there were no additional late fees or additional charges. Apart from this, Ms S had a good repayment history.

Ms S doesn't seem to have disagreed with the findings reached by the adjudicator.

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 this sort of lending - including all the relevant rules, guidance and good industry practice - on our website.

Morses 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. 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 Ms S'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 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.

Morses 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' complaint.

Ms S doesn't appear to have disagreed with the outcome that the adjudicator reached and Morses hasn't disagreed with the adjudicator's assessment about loans 1 - 3. Therefore, these loans are no longer in dispute, and I don't think I must make a finding about them. But I have kept these loans in mind when thinking about the overall lending relationship.

Instead, this decision will focus on whether Morses' decision to provide loans 4 and 5.

## Loans 4 and 5

Loan 4 was taken on the same day that loan 2 was repaid, and it was also, the largest capital loan to date. With Ms S' existing credit commitment to Morses, her total liability to it was £25 per week.

Loan 5 was granted on the same day that loan 3 was repaid and it had taken Ms S weeks longer than contractually planned into to repay loan 3. Again, loan 5, was the joint largest loan to date and with loan 4 running at the same time her total commitment to Morses was £30 per week.

When these loans were approved, Morses asked Ms S for details of her income and she declared a weekly figure of £360 for loan 4 and £390 for loan 5. Mores says the income figure was checked with a credit reference agency for accuracy, but no further information about the check and / or the result(s) have been provided.

In terms of outgoings, Ms S declared these to be £232 for loan 4 (including the repayment for loan 3) and £187 for loan 5 (including the repayment towards loan 4). Overall, this left disposable weekly income of £125.50 for loan 4 and £203 for loan 5.

Morses may have considered that Ms S had sufficient disposable income to afford the repayments she was committed to making. And while, the information it gathered suggested this, I don't think, for the reasons I'll outline below the checks went far enough.

By loan 4, it would've been proportionate for Morses' checks to go further. This loan was taken almost a year after her first loan, the day of loan 2 being repaid and was the largest capital loan to date. These factors, to name a few, ought to have prompted Morses to have started to have verified the information Ms S was providing.

So, I don't think it was reasonable for Morses to have relied solely on what Ms S declared to it about her income and expenditure even though this information suggested Ms S could afford these loan repayments.

Instead, I think it needed to gain a full understanding of Ms S' actual financial position to ensure the loans were affordable. This could've been done in several ways, such as asking for evidence of her income and outgoings through example pay slips or copies of bills. Or perhaps this information could've been verified using a copy of her credit file or by reviewing her bank statements.

I accept the regulations don't provide a list of checks that Morses needed to do, but the regulations do talk about proportionate checks, and given what I've said above, it had now reached the stage where it wasn't reasonable to continue to rely on what it was being told.

Further checks would've helped Morses understand where there was anything that it may have needed to have considered about Ms S' financial position before it advanced the loans.

Ms S has provided the Financial Ombudsman Service with copy bank statements in the lead up to these loans being approved. So, I think it's entirely reasonable to have considered them to understand what Morses may have seen had it carried out what I consider to be a proportionate check.

In the period leading up to loan 4 being granted I can see a number of (at least 3) direct debit payments being returned as unpaid due to a lack of funds in her account. And, returned bill payments are a sign as outlined by the industry regulator in CONC 1.3 that

Ms S was likely in financial difficulties. Morses would've likely discovered this, if it had done what I consider to be a proportionate check.

So, I think, loan 4 – and any future loan (including loan 5) were unsustainable for Ms S and therefore I'm upholding her complaint about them. I've outlined below what Morses needs to do in order to put things right for her.

### **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 given Ms S loans 4 and 5, 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 Ms S 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 Ms S 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 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' liability in this case for what I'm satisfied it has done wrong and should put right.

Morses shouldn't have given Ms S loans 4 and 5.

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 you have 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 4 and 5, and treat any repayments made by Ms S as though they had been repayments of the principal towards 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 outstanding loans. 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 you have already written-off.

- E) Morses should remove any adverse information recorded on Ms S' credit file in relation to loans 4 and 5.

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

### **My final decision**

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 14 December 2022.

Robert Walker  
**Ombudsman**