DRN-3791843

The complaint

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

What happened

Ms C was advanced five home collected loans between March 2016 and June 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	£1,000.00	23/03/2016	20/12/2016	36	£40.00
2	£600.00	20/12/2016	16/06/2017	33	£30.00
3	£400.00	16/06/2017	11/05/2018	33	£20.00
4	£600.00	16/06/2017	22/06/2018	33	£30.00
5	£370.00	22/06/2018	29/03/2019	33	£18.50

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

An adjudicator reviewed the complaint. He thought Morses had made a reasonable decision to provide loans 1 - 4 - so he didn't uphold Ms C's complaint about these loans. But he thought the lending was now harmful for Ms C by the time loan 5 was granted and this led him to uphold Ms C's complaint about the loan.

Morses disagreed with the outcome the adjudicator had reached about loan five. I've summarised its comments below.

- Loan 5 was the smallest value loan – which is half as much as Ms C previously borrowed – this led to smaller weekly repayments.
- Morses calculated that Ms C had sufficient disposable income to afford the repayments due on this loan.
- Ms C's income was confirmed through a credit reference agency.
- Ms C was committed to using 14.2% of her income to meet the loan repayment.
- Morses wasn't aware of any financial difficulties.

Ms C's representative told the Financial Ombudsman that Ms C accepted the findings.

The case was then passed to me and I issued a provisional decision explaining the reasons why I was intending to still uphold Ms C's complaint about loan 5 but for different reasons. A copy the provisional findings follows this in italics and a smaller font and forms part of this final decision.

What I said in my provisional decision

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 Ms C 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've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Ms C'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 C. These factors include:

- *Ms C 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 C 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 C 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 C.

Morses was required to establish whether Ms C 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 C 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 C's complaint.

Neither Morses nor Ms C (or her representative) appear to disagree with the outcome the adjudicator reached about loans 1 - 4. I therefore no longer think these loans are in dispute and so I say no more about them.

Loan 5

The adjudicator upheld this loan because in his view the loan was harmful for Ms C because it was now unsustainable for Morses to continue to lend to her.

I can understand why the adjudicator has concluded this, but I don't think, Morses would've concluded these loans were now harmful to Ms C.

I accept, that Ms C had been indebted with Morses continuously for around 27 months – and she was further committing to be indebted for an additional 33 weeks. This, in some situations could be a sign that she was now reliant on the borrowing or at the very least having longer term money management problems. Neither can I ignore that the lending was consecutive and at times overlapped, which could show that Ms C had a continued need for *credit.*

But I also have to keep in mind that Ms C's borrowing wasn't increasing in fact there had been a steady decrease in the capital borrowed and by loan five, this was one of the smallest loans with the smallest weekly repayment. So, I can't fairly conclude Ms C's commitments were increasing and because of that I can't conclude that Ms C's indebtedness seemed to be increasing unsustainably.

So, taking everything together, I don't think Morses would've or ought to have realised the loan was unsustainable for Ms C and I so I am intending to conclude the loans weren't likely to be so harmful that it would've prompted Morses to have stopped lending to her. But that doesn't mean Morse did all it should've done before advancing the loan.

For this loan, Ms C declared a weekly income of £200. Morses' information doesn't show how this income was made up, for example whether it was salary or benefits. But Morses does say her information was checked with a credit reference agency and this confirmed a high degree of accuracy. But the results of this income check haven't been provided. Ms C also declared that her outgoings were £70 a week, leaving £130 per week in disposable income in which to afford her weekly repayment of £18.50.

Based solely on Ms C's income and expenditure information Morses could've been confident she would be able to comfortably afford the repayments she was committed to making. But its arguable whether these checks went far enough considering how long Ms C had been indebted to Morses, her future weekly commitment and what Morses already knew about Ms C's finances.

I say this because it would appear, based on the information Morses' has supplied that there must have been a significant change in circumstances between loans four and five. Given that her income reduced by over 50% and her outgoings decreased by more than half.

In my view, by the final loan, it would've been reasonable for Morses to have at the very least, started to have verified the information it was being given. I've not seen anything to suggest it carried out further checks in this case.

However, I don't think I need to try and establish, in this case, whether a proportionate check would've led Morses to conclude these loans were unaffordable for Ms C. The reason I say this is because there were clear signs in the way Ms C had repaid her previous loans which indicated she was having financial difficulties.

It took her an additional 14 weeks to repay loan three and an additional 20 weeks to repay loan four. So, Ms C had shown, in her repayment history that she was struggling to repay her loans.

The loan three weekly repayment was only marginally larger than loan five and it took Ms C nearly 50% longer than contracted to pay that amount. I'm therefore, not sure why Morses felt that a loan of similar value could be repaid sustainably. I don't think, knowing that she had struggled to repay two loans (one for a similar sum) that Morses could've been confident that Ms C would repay her fifth loan in a sustainable manner.

So, it seems that Ms C was likely having significant problems repaying her previous debts and is an indicator that she couldn't repay her loans sustainably.

I'm, therefore, still intending to uphold Ms C's complaint about loan 5 but for different reasons.

Response to provsional decision

Both Ms C and Morses were asked to provide anything further for consideration as soon as possible, but in any event no later than 8 November 2022.

Ms C's representative confirmed receipt of the provisional decision. It explained it would contact Ms C and provide any further information it receives. To date, no further correspondents has been sent to the Financial Ombudsman Service.

Morses also emailed the Financial Ombudsman Service to confirm it accepted the findings as outlined in the provisional 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.

As neither party provided anything further for consideration, I see no reason to depart from the findings that I reached in the provisional decision.

I still don't think Morses ought to have approved loan five considering the problems Ms C had had in repaying her two previous loans. I've outlined below what Morses needs to do in order to put things right for Ms C.

Putting things right

In deciding what redress Morses should fairly pay in this case I've thought about what might have happened had if it hadn't lent loan 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 C 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 C 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 C 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 C with loan 5.

A. Morses should add together the total of the repayments made by Ms C towards interest, fees and charges on the loan, including payments made to a third party where applicable, but not including anything Morses may have already refunded.
B. Morses should calculate 8% simple interest* on the individual payments made by Ms C which were considered as part of "A", calculated from the date Ms C originally made the payments, to the date the complaint is settled.
C. Morses should pay Ms C the total of "A" plus "B".
D. Morses should remove any adverse information recorded on Ms C's credit file about loan 5.

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

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Ms C's complaint in part.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 7 December 2022.

Robert Walker
Ombudsman