

The complaint

Mrs S complains Morses Club PLC (Morses) gave her loans that she couldn't afford to repay.

What happened

Mrs S took seven home collected loans between July 2017 and September 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	£300.00	12/07/2017	11/08/2017	33	£15.00
2	£400.00	12/09/2017	15/12/2017	33	£20.00
3	£200.00	02/11/2017	15/12/2017	33	£10.00
4	£500.00	09/01/2018	11/05/2018	52	£17.50
5	£200.00	09/01/2018	11/05/2018	33	£10.00
6	£400.00	10/07/2018	sold	33	£20.00
7	£200.00	08/09/2018	sold	33	£10.00

Mrs S had some problems repaying her final two loans and Morses' statement of account shows these were sold to a third-party collection agency in April 2019. Later, Morses says the collection agency had taken the decision to write these debts off.

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 2 and 3 were running at the same time Mrs S' weekly commitment was £30.

Morses considered Mrs S' complaint and issued its final response letter in which it explained why it wasn't upholding her complaint. Mrs S didn't agree, and she referred the complaint to the Financial Ombudsman Service.

Morses then agreed to offer to uphold Mrs S' complaint about loan 7 only. It explained that as the debt had been sold and written off there wasn't any refund due to Mrs S as she'd not fully repaid the capital she had borrowed.

Mrs S didn't accept this outcome and instead provided copies of her bank statements.

The complaint was considered by an adjudicator who thought a reasonable decision to provide loans 1 and 2 was made. He also didn't consider loan 7, because Morses had already made an offer to settle the loan.

However, he thought when loan 3 was granted, given the outstanding loan that Mrs S had and her declared income that loan 3 and all future loans shouldn't have been provided. He said this because the amount Mrs S was going to need to use from her income was too high and therefore the loans weren't likely to be sustainable.

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

below.

- Mrs S regularly settled her loans early.
- There were small gaps between some of the loans such as between loans 1 and 2.
- For loan 3, Mrs S' income was verified, and her combined weekly repayment (with loan 2) represented 18% of her income. This point was made for the later loans too, for example when loan 6 was granted only 12% of her income went towards making the repayment.
- Both loans 2 and 3 were settled earlier than contracted.
- There was nothing with the repayment history that would've suggested Mrs S would have problems making these repayments.
- Adequate checks were carried out before these loans were approved.
- Mrs S was never told about any difficulties Mrs S was having at the time.

Mrs S didn't disagree with the adjudicator's outcome.

As no agreement has been reached, the case was passed for a decision. I proceed to issue a provisional decision outlining why I thought the complaint about loans 3 – 7 should still be upheld, but for different reasons. A copy of 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 short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Mrs S had to assess the lending to check if Mrs 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. Mrs S's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mrs 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 Mrs S should have done more to establish that any lending was sustainable for Mrs S. These factors include:

- *Mrs 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);*
- *Mrs 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);*
- *Mrs 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 Mrs S.

Mrs S was required to establish whether Mrs 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 Mrs 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 Mrs S's complaint.

Mrs S appears to have accepted the adjudicator's findings about loans 1 and 2. Moses has also accepted that loan 7 ought to not have been granted. So, I no longer think these loans are in dispute.

Loan 3

For this loan Mrs S declared she had a weekly income of around £163 with outgoings of £80. This left around £83 per week to make the weekly repayment of £10 towards this loan. However, when this loan was running so was loan 2, so this meant Mrs S' total weekly commitment to Moses was £30 per week.

Moses says for this loan it saw evidence of her income – but it hasn't told us what evidence this was or provided a copy of it.

When loan 3 was advanced, Mrs S' income had dropped slightly compared to what she declared for loans 1 and 2. In addition, her weekly expenditure had almost doubled since loan 2 was granted.

Considering the information Mrs S provided about her income and expenditure, Moses may have felt, the loan was pounds and pence affordable because this is what the information showed. However, as I've explained above, that is only part of what Moses had to consider before granting it.

However, I don't think, given what I've seen that Moses made a fair decision when it decided to provide this loan to Mrs S. I'm, therefore, upholding Mrs S's complaint about it. As Moses has pointed out in response to our adjudicator, Mrs S was committed to spending 18% of her income towards meeting her commitments to Moses at this time. In my view the payments in this case were too high when considering what it knew about Mrs S' circumstances.

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

I say this because Mrs S was making a commitment to pay Moses for a further 33 weeks and I think it's fair to say that Mrs S' income. On top of that, the information Moses was given suggested that her income had gone down with her expenditure going up.

While Moses doesn't think those percentages are excessive I think it was. There is clearly going to be a line beyond which it wouldn't have been reasonable for Moses 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.

Loans 4 – 6

The adjudicator upheld these loans because he still considered Mrs S was committing to spending too much of her income repaying these loans. But as Moses has pointed out, the portion of her income which was committed to being used to make these repayments tended to decrease with each new loan. So, while I can understand why the adjudicator upheld

these loans, there is, given what I've seen a more compelling and persuasive argument.

Loans 4 and 5 were taken on the same day, each loan had a different repayment term but there was an expectation the loans would be running concurrently for at least 33 weeks and her commitment was £30 each week.

Morses collected income and expenditure which showed it that these loans were likely to be affordable. But that doesn't mean that Morses carried out proportionate checks. I do think the time in debt, increased capital borrowing and once again having two loans running at the same time ought to have alerted Morses to the possibility that Mrs S may have been having some wider problems.

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

Instead, I think it needed to gain a full understanding of Mrs S's actual financial position to ensure the lending was affordable. This could've been done in several ways, such as asking for evidence of her outgoings, or looking at bank statements and/or Mrs S's full credit file. This might've helped verify information provided and revealed whether there was any other information that Morses might've needed to consider about Mrs S's financial position.

However, that isn't the end of the matter. For me to be able to uphold these loans, I have to be satisfied that had Morses carried out a proportionate check it would've likely discovered that Mrs S couldn't afford them.

Mrs S has provided copy bank statement for the period leading up to loans 4 and 5 and having looked at this, there is an indication that Mrs S was struggling to meet her existing credit commitments and already had a significant amount of outstanding debt.

Shortly, before these loans were approved, a payment for a high-cost lender was returned as unpaid due to a lack of funds in the account. This to me is an indication that Mrs S was having problems meeting her existing credit commitments.

In addition to this, Mrs S had 6 outstanding high-cost credit / payday loans at the time. Her monthly commitment to these loans seems to be around £1,000 per month. On top of this she also had three outstanding credit cards that she seemed to be making the minimum repayment for.

The situation is no different when loan 6 was approved, at this time there were 4 credit cards outstanding, 2 home collected loans with another provider as well as four other high-cost credit loans. In addition, shortly before this loan was approved, a further two direct debits were returned as unpaid.

So had Morses carried out what I consider to be a proportionate check, I think it would've likely discovered Mrs S couldn't afford the repayment for these loans because she already had a significant amount of outstanding credit, which at times she was struggling to repay. I'm therefore intending to uphold the same number of loans, as the adjudicator but just for different reasons.

I've outlined below what Morses needs to do in order to put things right for Mrs S (including the compensation for loan 7 which Morses has already accepted).

Response to the provisional decision

Both Mrs S and Morses were asked to provide anything further for consideration as soon as possible, but in any event, no later than 7 December 2022.

Mrs S confirmed she accepted the findings that were reached in the provisional decision.

Morses said the agent who provided these loans hasn't retained copies of the wage slips which were collected and it then confirmed it also had nothing further to add.

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.

Mrs S has accepted the findings of the provisional decision and while I thank Morses for confirming that the agent hasn't retained copies of the wage slips it hasn't provided anything new or further for my consideration.

Therefore, as nothing further has been supplied, I see no reason to depart from the findings which were made in the provisional decision. I still think Mrs S was due to pay a too high portion of her income for loan 3.

From loan 4, further checks ought to have been carried out by Morses. Had it carried out these further checks it would've likely discovered that Mrs S was having financial difficulties and so loans 4 – 6 shouldn't have been advanced either.

Morses should still agree to uphold the complaint about loan 7, as it outlined in the final response letter.

I've outlined below what Morses needs to do in order to put things right for Mrs S in relation to loans 3 – 7.

Putting things right

In deciding what redress Morses' should fairly pay in this case I've thought about what might have happened had Morses not lent loans 3 - 7 to Mrs S, 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 Mrs 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 Mrs 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 Mrs 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 Mrs S loans 3 - 7.

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 Morse is not able to buy the debts back then it should liaise with the new debt owner to achieve the results outlined below.

- A. Morse should add together the total of the repayments made by Mrs S towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything you have already refunded.
- B. Morse should calculate 8% simple interest* on the individual payments made by Mrs S which were considered as part of "A", calculated from the date Mrs S originally made the payments, to the date the complaint is settled.
- C. Morse should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mrs S as though they had been repayments of the principal towards loans 6 and 7. If this results in Mrs S having made overpayments then Morse 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. Morse 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 [and any principal already written-off]. If this results in a surplus, then the surplus should be paid to Mrs S. However, if there is still an outstanding balance then you should try to agree an affordable repayment plan with Mrs S. But Morse shouldn't pursue outstanding balances made up of principal which has already been written-off.
- E. Morse should remove any adverse information recorded on Mrs S' credit file in relation to loans 3 - 6. The overall pattern of Mrs S' borrowing for loan 7 means any information recorded about it is adverse, so Morse should remove the loan entirely from Mrs S' credit file. Morse do not have to remove loan 7 from Mrs S' credit file until the loan has been repaid, but Morse should still remove any adverse information recorded about it.

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

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mrs S' complaint in part.

Morse Club PLC should put things right for Mrs S as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 5 January 2023.

Robert Walker
Ombudsman