DRN-3847980

The complaint

Mr K, through a representative complains that Morses Club PLC (Morses) didn't carry out sufficient proportionate affordability checks before it lent to him.

What happened

Mr K was advanced six home collected loans between April 2016 and May 2019. 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	22/04/2016	18/08/2016	20	£15.00
2	£300.00	11/08/2016	09/03/2017	33	£15.00
3	£400.00	09/03/2017	06/10/2017	33	£20.00
4	£400.00	06/10/2017	07/06/2018	33	£20.00
5	£500.00	07/06/2018	31/01/2019	33	£25.00
6	£600.00	17/05/2019	06/11/2019	33	£30.00

Following Mr K's complaint, Morses wrote to his representative to explain that it wasn't going to uphold the complaint. Mr K's representative, then referred the complaint to the Financial Ombudsman.

An adjudicator reviewed the complaint. She thought Morses had made a reasonable decision to provide loans 1 - 4 and so she didn't uphold Mr K's complaint about these loans. But she thought loans 5 and 6 should be upheld because the lending had become harmful for him.

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

- Loans 5 and 6 were larger but the increase wasn't in Morses' view unsustainable.
- Mr K had a good repayment history.
- There was a break in lending between Mr K repaying loan 5 and returning for loan 6.
- An income and expenditure check was completed before each loan was granted and all of the loans looked affordable.

Mr K's representative confirmed receipt and said it would provide any further comments but none where provided.

The case was then passed to an ombudsman to make a decision about the complaint. I then proceeded to issue a provisional decision explaining the reasons why I was intending to uphold Mr K's complaint about loan 5 only. A copy of the provisional findings follows this in smaller font and italics and forms part of this final decision.

What I said in the 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 Mr K 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've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr K'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 K. These factors include:

- *Mr K 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 K 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 K 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 K.

Morses was required to establish whether Mr K 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 K 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 K's complaint.

Neither Morses nor Mr K (or his 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. But I have kept them in mind when thinking about the overall lending relationship.

Loan 5

For this loan, Morses has shown that it asked Mr K for details of his income and expenditure. He declared, an income of £299.27 with outgoings of £196 per week. This left Mr K with a weekly disposable income of £103.27 per week to make his weekly repayments of no more than £25.

Based solely on Mr K's income and expenditure information Morses could've been confident he would be able to comfortably afford the repayments he was committed to making.

But it's arguable whether these checks went far enough considering how long Mr K had been indebted to Morses, his future weekly payments and his lending history. For example, Mr K returning for further borrowing usually on the same day a previous loan had been repaid. By now, 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 Mr K.

So, in addition to looking at the checks that Morses did I've also looked at the overall pattern of Morses' lending history with Mr K, with a view to seeing if there was a point at which Morses should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Morses should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mr K's case, I think that this point was reached by loan 5. I say this because:

- *At this point Morses ought to have realised Mr K was not managing to repay his loans sustainably. Mr K was now taking his fifth loan in 26 months. So Morses ought to have realised it was more likely than not Mr K was having to borrow further to cover a long-term short fall in his living costs.*
- *From his first loan, Mr K was provided with a new loan on the same day a previous loan was repaid. To me, this is a sign that Mr K was using these loans to fill a long-term gap in his income rather than as a short-term need.*
- *Over the course of the lending relationship, Mr K's weekly commitments generally increased. There was no time when his commitment decreased. Which may have given Morses confidence that Mr K was no longer reliant on these loans. However, the fact that these loans were lent in a consecutive manner, ought to have led it to realise these loans weren't sustainable anymore.*
- *Mr K wasn't making any real inroads into the amount he owed Morses. Loan 5 was taken out 26 months after Mr K's first loan and was to be repaid over the same term as most of the previous loans. This loan was also the largest capital loan to date and was more than twice the value of the first loan. Mr K had paid large amounts of interest to, in effect, service a debt to Morses over an extended period.*

I think that Mr K lost out when Morses provided loan 5 because:

- *these loans had the effect of unfairly prolonging Mr K's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time*
- *the number of loans and the length of time over which Mr K borrowed was likely to have had negative implications on Mr K's ability to access mainstream credit and so kept him in the market for these high-cost loans.*

So, I'm upholding Mr K's complaint about loan 5.

Loan 6

The adjudicator upheld the loan because in her view the lending was now harmful for Mr K.

I accept, that Mr K had been indebted with Morses for around 3 years and he was further committing to be indebted for an additional 33 weeks. This, in some situations could be a sign that he was now reliant on the borrowing or at the very least having longer term money management problems.

However, what I can't ignore is that there was a break of over around four months from when he repaid loan 5 to when he returned for loan 6. In some cases, that maybe enough to break the whole lending chain and therefore, Morses, in some cases may have considered loan 6 as in effect loan 1 in a new chain.

In saying that, in this case, I think the break in lending is significant enough to show that Mr K was no longer reliant on this lending and or it was otherwise harmful for him that *doesn't mean Morses did all it ought to have done before it advanced this loan.*

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

It also doesn't mean that Morses carried out a proportionate check. I do think the time in debt, the increasing capital value of the loan ought to have alerted Morses to the possibility that Mr K may have had wider financial problems.

So, I don't think it was reasonable for Morses to have relied on what Mr K declared to it about his income and expenditure even though this information suggested Mr K could afford the loan repayments.

Instead, I think it needed to gain a full understanding of Mr K's actual financial position to ensure the loan 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 Mr K'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 Mr K's financial position.

However, that isn't the end of the matter. For me to be able to uphold the loan, I have to be satisfied that had Morses carried out what I consider to be a proportionate check it would've likely discovered that Mr K couldn't afford it.

Mr K's representative hasn't provided a copy of his credit file or his bank statements covering the period leading up to loan being advanced. Without anything further, I can't be sure, what Morses may have seen had it carried out better checks. So, I can't fairly uphold the complaint about this loan.

So, I'm intending to not uphold Mr K's complaint about the loan.

Response to the provisional decision

Both Mr K and Morses were asked to provide anything further in response to the provisional decision as soon as possible, but in any event, no later than 5 December 2022.

Mr K's representative emailed the Financial Ombudsman to confirm Mr K accepted the findings as outlined in the provisional decision.

Morses also let the Financial Ombudsman know that it was accepting the outcome 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.

Both Mr K and Morses accepted the findings which I outlined in the provisional decision. I therefore see no reason to depart from those findings and I still think Morses was wrong to have advanced loan 5 to Mr K.

I've outlined below what Morses has agreed to do in order to put things right.

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 Mr K may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, he may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, he 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 he had done that, the information that would have been available to such a lender and how he 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 K 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 K 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 Mr K with loan 5.

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

*HM Revenue & Custom requires Morses to deduct tax from this interest. Morses should give Mr K a certificate showing how much tax it has deducted, if he asks for one.

My final decision

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

Morses Club PLC should put things right for Mr K as directed above.

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

Robert Walker
Ombudsman