

The complaint

Mr L complains that Morses Club PLC (Morses) Morses gave him a loan he couldn't afford to repay because at the time he had other short-term loans that needed repaying.

What happened

Mr L took one £400 loan from Morses on 31 January 2022. Mr L was due to make 35 weekly repayments of £20. Had Mr L repaid the loan in line with the credit agreement he would've repaid a total of £700. Mr L has had some problems repaying this loan, and as of August 2022, a total outstanding balance remains of £640.

Following Mr L's complaint, Morses issued its final response letter to him. In summary, it said it had carried out proportionate checks which included asking Mr L about his income and expenditure and carrying out a credit search before the loan was approved. Based on these checks, Morses was confident Mr L would be able to afford his weekly credit commitment. Unhappy with this response, Mr L referred his complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator who didn't uphold it. He concluded Morses had carried out proportionate checks which showed the loan repayments to be affordable. Mr L didn't agree with the assessment, and I've summarised his responses below:

- He was over £20,000 in debt at the time.
- Mr L had numerous defaults at the time.
- Mr L was supporting his family at the time and the loan wasn't affordable.
- As part of the assessment, Mr L acknowledges he spoke to an agent on the phone, and he was roughly guessing the answers to the questions.
- Mr L had also 'maxed' out his overdraft.

Morses didn't respond to or acknowledge the adjudicator's assessment.

As no agreement has been reached, the case was passed to me for a decision.

I proceeded to issue a provisional decision explaining the reasons why I was intending to uphold Mr L's complaint. A copy of the provisional findings follows this in italics and smaller font to differentiate it and it 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.

Morses had to assess the lending to check if Mr L could afford to pay back the amount he'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 Mr L'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 Moses should have done more to establish that any lending was sustainable for Mr L. These factors include:

- *Mr L 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 L 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 L 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 L.

Moses was required to establish whether Mr L 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 L was able to repay his loan 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 L's complaint.

Moses has shown, that as part of the affordability assessment it asked Mr L for details of his income and expenditure. Mr L's income has been recorded as being £470 per week. Mr L also declared his weekly outgoings were £274.50.

This left Mr L with disposable weekly income of £195.50. This was more than sufficient for Moses to believe Mr L could afford the repayment of £20 per week, the loan therefore looked affordable.

However, while Moses knew that Mr L's outgoings came to £274.50 per week, of that £222 was actually being used to service existing credit. So, I don't think it was right for Moses to have thought that Mr L could make these payments in a sustainable manner, given that around 50% of his income – based on what he had declared - was already going to pay other creditors.

It also isn't reasonable to have believed, that Mr L's other outgoings, such as food, media etc would've been around £50 per week – this just isn't plausible. The results of the credit checks, which I come on to below, also, in my view show Mr L was likely a customer in likely financial distress.

Before the loan was approved Moses also carried out a credit search and it has provided the Financial Ombudsman Service with a copy of the results it received. I want to add that although Moses carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard.

Therefore, it's possible that the information Moses received may not entirely reflect the information Mr L may be able to see in his own credit report. There could be for a number of reasons for this, such as Moses only asking for certain pieces of information or recent

lending not yet appearing on his credit report. But what Morses couldn't do, was carry out a credit search and then not react to the to the information it received – if necessary.

Morses was also entitled to rely on the information it was given by the credit reference agency. So, I've taken a look at the results to see whether there was anything contained within it that would've either prompted Morses to have carried out further checks or possibly have declined Mr L's application.

Having reviewed these results, I can see some quite concerning information that ought to have made it realise that Mr M was likely already over-extended with other creditors. I've summarised these below.

- *I can see at the time this loan was approved Mr L had 15 active credit accounts with outstanding balances of £22,230.*
- *Mr L had opened two new credit accounts within the last three months – a sign that he was regularly seeking new credit.*
- *Within the last 12 months, Mr L had opened and accessed credit in excess of £16,000.*
- *Mr L had seven defaults recorded on his credit file, with the most recent of these being recorded 15 months before the loan was approved. Mr L had only been able to successfully repay one of the defaulted accounts.*
- *Morses was told, that Mr L's monthly commitment to creditors was £938. This, is a significant sum, as represents around 50% of Mr L's declared income.*

In my view, Mr L's credit search results showed that he had a high amount of outstanding debt, with repayments due (already) of £938 per month (before this loan was paid) and a history of regularly defaulting on credit accounts within the last three years.

Given the information that Mr L provided Morses as part of his income and expenditure as well as the credit check results, Morses, at a minimum ought to have verified the information Mr L had provided – perhaps through a bank statement.

However, as part of assessing the loan, Morses also had to consider whether the repayments would be sustainable for Mr L – given what I've seen, especially in light of the high amount of debt (and Mr L already paying a significant portion to other creditors) I've concluded that Morses didn't make a fair lending decision. And I'm intending to uphold the complaint about the loan.

I've outlined below what Morses needs to order to put things right for Mr L – but it is worth saying that Mr L hasn't fully repaid Morses the capital that he borrowed, so at best, his overall outstanding balance will reduce to around £340 – assuming no further payments have been made since Morses provided its statement of account.

Response to the provisional decision

Both Mr L and Morses were asked to provide anything further for consideration as soon as possible, but in any event, no later than 11 January 2023.

Mr L emailed and said he accepted the provisional findings. However, he added:

"I don't agree with owing the company any money as I'm sure they have gone into liquidation as i recieve (sic) and email which I can forward to you if you wish"

Later, a copy of an email Mr L had received from Morses about the proposed Scheme of Arrangement was forwarded to us.

Morses also emailed to say that it accepts the findings of the provisional decision.

Although the ultimate deadline of 11 January 2023 for responses to the provisional decision hasn't yet passed, as both parties have responded I see no reason to delay the issuing of the final 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 both parties, accept the findings of the provisional decision I see no reason to depart from what I previously said. I still don't think Morses ought to have advanced the loan to Mr L because it was unlikely to be affordable for him.

However, Mr L has said that he doesn't think the outstanding balance ought to be repaid. No further information as to why this is the case has been provided, beyond the details of the Scheme of Arrangement email Mr L sent.

At the moment, this is currently at the proposal stage, and it doesn't mean the lender (Morses) is liquated. Instead, the Scheme of Arrangement can limit the types of complaint that are raised and provide one pot of money to which redress will be paid out off. But as the email provided by Mr L shows, this scheme hasn't yet been approved.

I also haven't seen anything else to make me think Morses ought to write off the balance Mr L owes it, but that doesn't mean that this option doesn't remain open to Morses – if it considers it reasonable when providing forbearance help to Mr L. So, as it stands, an outstanding balance will be due to be paid and I leave it up to Morses and Mr L to discuss a way forward.

I've outlined below, what Morses needs 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 it not lent to Mr L, 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 L may have simply left matters there, not attempting to obtain the funds from elsewhere. 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 Mr L 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 L 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 Mr L this loan.

If Morses has sold the outstanding debts it should buy it back if it is able to do so and then take the following steps. If Morses isn't able to buy the debt back then it should liaise with the new debt owner to achieve the results outlined below.

- A. Morses should remove all interest, fees and charges from the balance on this loan, and treat any repayments made by Mr L as though they had been repayments towards the principal of the loan. If this results in Mr L 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.
- B. However, if there is still an outstanding balance then Morses should try to agree an affordable repayment plan with Mr L. I'd also remind Morses of its obligation to treat Mr L fairly and with forbearance if necessary.
- C. Morses should remove any adverse payment information recorded on Mr L's credit file in relation to this loan.

*HM Revenue & Customs requires Morses to deduct tax from this interest. Morses should give Mr L 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 L's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 2 February 2023.

Robert Walker
Ombudsman