

The complaint

Miss S complains Morses Club PLC (Morses) didn't carry out proportionate affordability checks before it granted her loans.

Miss S also says she made the agent aware of her mental health issues and this wasn't noted on Morses' system.

What happened

Miss S was advanced three home collected loans and I've included some of the information we've received about them in the table below.

loan number	loan amount	agreement date	repayment date	number of weekly repayments	highest repayment per loan
1	£250.00	03/03/2021	11/10/2021	34	£12.50
2	£250.00	30/06/2021	outstanding	35	£12.50
3	£250.00	11/10/2021	outstanding	35	£12.50

Miss S has had some problems repaying her final two loans and Morses says the account remains with it but she is making payments as part of a debt plan.

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

An adjudicator reviewed the complaint. She thought Morses had made a reasonable decision to provide loans 1 and 2 so she didn't uphold Miss S's complaint about them.

However, the adjudicator said when loan 3 was approved, given her loan history and the decrease in her income she thought Morses ought to have carried out further checks. Had it done so, it would've likely discovered a number of gambling transactions and so Morses ought to not have provided the loan.

Morses disagreed with the outcome the adjudicator had reached about loan 3. I've summarised its comments below;

- There was no requirement for Morses to review Miss S's bank statements and therefore it wouldn't have been aware of Miss S's gambling history.
- Miss S's income for loan 3 was confirmed by a credit reference agency.
- Morses used figures from the Office of National Statistics (ONS) and pre-populated minimum figures for expenditure which included rent, council tax, utilities, insurance, transport, groceries, media and childcare.
- Miss S declared that her rent was paid by benefits and that she did not have any insurance, transport or childcare costs and signed her agreement to confirm all information she had provided was correct.

After the complaint was passed for a decision, further enquires were made with Miss S about

her health and her current situation. Enquires were also made with Morses about the outstanding balance and when it first became aware of Miss S's mental health diagnoses.

I then issued a provisional decision explaining the reasons why I was intending to still uphold Miss S's complaint in part. Both parties were asked to provide anything further for consideration as soon as possible, but no later than 31 May 2023.

Miss S didn't respond to the provisional decision.

Morses, confirmed that the loan applications were made online and that it had nothing further to add.

A copy of the provisional findings follows this in a smaller font and in italics 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 Miss 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've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Miss 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 Miss S. These factors include:

- *Miss 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);*
- *Miss 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);*
- *Miss 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 Miss S.

Morses was required to establish whether Miss 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 Miss 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 Miss S's complaint.

Neither Morses nor Miss S appear to disagree with the outcome the adjudicator reached about loans 1 and 2. I therefore no longer think these loans are in dispute and so I say no more about them. Instead, this decision has focused on what happened when loan 3 was advanced.

Loan 3

This loan was advanced on the same day that Miss S had repaid loan 1 – and she was borrowing the same amount.

Morses has shown that it asked Miss S for details of her income and expenditure. Miss S declared her weekly income was now £250 per week. But this was a significant decrease from what she had declared at loan 1 - £347 each week and the £300 each week she had declared for loan 2.

Morses also says Miss S's income was verified with a credit reference agency for its accuracy. And Morses says this check showed it could rely on her declared income, no evidence of this check (or the results) has been provided.

In terms of expenditure, Morses has recorded weekly outgoings of £101 but around £42 of that was other credit commitments. Meaning that all of Miss S's living costs came to around £59 per week. Which I really don't think is reasonable. Indeed, her food costs had decreased from £40 per week at loan 2 to only £15 per week at loan 3. To me this doesn't seem plausible.

This left weekly disposable income of £149 to be able to afford the loan repayment due for this loan of £12.50. Morses could've been reasonably confident she would be able to afford the repayments she was committed to making. But I do think it's fair to say that at this point in time, Morses ought to have had some concerns about the information Miss S was providing about her living costs.

So, it's arguable whether these checks went far enough considering the consecutive nature of Miss S's borrowing, her future weekly commitment and what Morses already knew about Miss S's finances – which I've mentioned above about her income and expenditure.

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.

One way it could've carried out further checks into Miss S's financial situation could've been to have asked to see details of her benefits and her outgoings, bank statements or any other documentation that Morses felt it needed to obtain in order to satisfy itself that Miss S could repay the loan.

Miss S has provided copy bank statements from around the time this loan was approved and so, I think it's reasonable to consider these. And like the adjudicator I can see that Miss S was a frequent user of gambling websites to the extent that had Morses looked at her bank statements it would've likely concluded the loan was neither affordable nor sustainable.

I am therefore planning to uphold Miss S's complaint about loan 3.

Other considerations

I want to be clear I have considered everything that Miss S has disclosed to the Financial Ombudsman about her medical history and diagnoses – which stretches back a number of years and does coincide with the dates that she took loans from Morses.

In short, Miss S says she told her agent about her disorder and that at the time the loans

were approved she was having a stressful time. Miss S says, one of the side effects of her disorder is that it can include periods of impulsive spending such as on gambling.

The documentation Miss S has provided about her health shows her mental health has been a concern for several years. Indeed, the letter she provided is dated July 2021, which is in-between loans 2 and 3 and details some recent help and support which she sought.

So, I think it's fair to say, based on Miss S's testimony and the medical evidence she has provided she has had a need for ongoing treatment and support for some time. However, I do not need to outline everything here, but I do hope she is still receiving the help and support that she needs, and I wish her well for the future.

Whereas, Moses says that it was unaware of Miss S's vulnerability until she raised her complaint with it in June 2022. In addition, Moses also said:

"I can confirm all of the loans were issued as faster payments so these were done remotely online.

The customer made all her payments through our online portal."

Indicating perhaps, as these were remote loans then Miss S may not have had face-to-face contact with Moses' agent. In response to the provisional decision Moses may wish to clarify this.

So, it seems that at the very least the agent didn't note down any discussions that may have been had between them and Miss S, and it has reiterated it didn't know about Miss S's vulnerability. However, that isn't the only thing I have to consider.

I also have to consider ought Moses to have been aware of Miss S's health and even if it was aware, does that mean that Miss S shouldn't have been provided with her loans?

I've therefore looked at and considered regulatory Mental Capacity Guidance in the Financial Conduct Authority (FCA) CONC Chapter 2.10 with which I am familiar. In summary I have to decide whether Moses knew or ought to have known at the time the loans were granted. If the answer to either one of these questions is yes, then I have to go on to consider whether Moses ought to have lent the loans.

I would be surprised if there was no discussion about Miss S's health considering that we know from the checks Moses' knew that Miss S was in receipt of benefits and as a result she didn't have any rent payments. I also don't think it's an unreasonable leap to say that she would've likely disclosed the type of benefit she was receiving and the reasons for that.

However, I have kept in mind that even if Moses or its agent did have any grounds to suspect that Miss S had a diagnosed mental health problem this doesn't mean it was necessarily wrong for the loans to be granted.

This has been part of my consideration. So, in short, I have to be satisfied that Moses either knew or ought to have known about Miss S's vulnerability but equally even if it did know about her vulnerabilities that doesn't mean it was necessarily wrong for it to have advanced the loans.

Ultimately, the indicators mentioned in the guidance have helped me, and while it is clear that Miss S has been unwell for a number of years and has at times sought extra help and support, I really don't have enough evidence in this case to say that even if Moses knew about Miss S's mental health problems that it ought to mean all the loans shouldn't have been granted to her.

I appreciate Miss S will be disappointed by my decision on this case in relation to this aspect of her complaint, but I do hope she understand as to why I've come to these conclusions.

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.

I thank Moses for confirming Miss S's loan applications were made online and so there was no face-to-face contact. However, I don't think that detracts from the points I made in the provisional decision because Moses accepts, as part of the application it knew of Miss S's benefit payments and perhaps that ought to have led it to question Miss S further. And I still don't think knowing this detracts from the findings because as I explained, even if Moses did know about Miss S's mental health problems I still think, based on what I had it would've granted her loans.

So, I've reached the same conclusions I reached before, for the same reasons. I still don't think Moses ought to have approved loan 3 for Miss S because further checks would've highlighted a significant amount of online gambling to the extent that Moses ought to have realised the loan wasn't sustainable or affordable for her.

I've outlined below what Moses needs to do in order to put things right for Miss S in relation to loan 3.

Putting things right

In deciding what redress Moses should fairly pay in this case I've thought about what might have happened had it had not provided loan 3, 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 Miss S 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 Miss 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 Miss S would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Moses's liability in this case for what I'm satisfied it has done wrong and should put right.

Moses shouldn't have provided Miss S with loan 3.

- A. Moses should remove all interest, fees and charges from the balance on loan 3, and treat any repayments made by Miss S as though they had been repayments of the principal. If this results in Miss S having made overpayments then Moses 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. If there is still an outstanding balance due then the amounts calculated in "A" should be used to repay any other balance remaining on outstanding loans. If this results in a surplus, then the surplus should be paid to Miss S. However,

if there is still an outstanding balance then Morses should try to agree an affordable repayment plan with Miss S.

- C. Morses should remove any adverse information recorded on Miss S's credit file in relation to loan 3.

*HM Revenue & Customs requires Morses to deduct tax from this interest. Morses should give Miss S 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 Miss S's complaint in part.

Morses Club PLC should put things right for Miss S as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 30 June 2023.

Robert Walker
Ombudsman