

The complaint

Mrs J complains through a representative that Morses Club PLC (Morses) gave her loans without carrying proportionate affordability checks.

What happened

Mrs J took 10 loans from Morses and I've outlined a summary of her borrowing below.

loan number	loan amount	agreement date	repayment date	number of weekly instalments	highest repayment per loan
1	£400.00	15/03/2016	04/05/2017	33	£20.00
2	£300.00	02/06/2016	01/11/2017	33	£15.00
3	£200.00	03/08/2016	22/08/2017	33	£10.00
4	£300.00	01/11/2017	18/07/2018	33	£15.00
5	£300.00	18/07/2018	18/09/2018	33	£15.00
6	£400.00	12/12/2018	21/08/2019	33	£20.00
7	£400.00	21/08/2019	03/06/2020	33	£20.00
8	£400.00	03/06/2020	22/01/2021	34	£20.00
9	£600.00	22/01/2021	01/03/2022	53	£21.00
10	£630.00	09/08/2022	outstanding	52	£22.68

Following Mrs J's representative's complaint, Morses issued its final response letter saying all complaints had been "*paused*" due to it trying to agree a Scheme of Arrangement with the regulator at the time. Mrs J's representative then referred the complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator who said given the proposed term of the Scheme of Arrangement she couldn't consider loans 1 – 9. However, she thought loan 10 – which could be considered - ought to not have been granted as it was clear that the lending was now harmful for Mrs J.

Mrs J, through her representative accepted the adjudicator's findings.

Morses didn't respond to the adjudicator's assessment despite being prompted for a response and being given extra time. As Morses hasn't responded to the adjudicator's assessment, to bring this matter to a close, the complaint has been passed to me for a 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.

Morses had to assess the lending to check if Mrs J 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 have taken into account a number

of different things, such as how much was being lent, the size of the repayments, and Mrs J'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 Mrs J. These factors include:

- Mrs J 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 J 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 J 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 J. The adjudicator thought this point was reached by the time loan 10 was granted.

Morses was required to establish whether Mrs J 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 J 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 J's complaint.

Morses' proposed a Scheme of Arrangement in and by doing so, it would mean that certain unaffordable lending complaints would have to be considered under an agreed set of rules within the Scheme.

The Scheme was approved in Court and became effective on 30 May 2023. This means, that a complaint about unaffordable lending that was made to Morses after 11 August 2022 (which is the case here) about lending between 1 April 2007 to 2 August 2022 would have to be considered by the Scheme.

In Mrs J's case that means she will (if she hasn't already done so) need to apply to the Scheme for it consider loans 1 – 9. As this Scheme has now been ratified and is in place, the Financial Ombudsman can't consider those loans for Mrs J. But a complaint about loan 10 has been considered.

Morses didn't respond to the adjudicator's assessment, so I don't know what, if anything, it thinks the adjudicator may have missed. And Mrs J has accepted the adjudicator's findings. So, this decision will focus on whether Morses did all it ought to have done before advancing loan 10.

Loan 10

So, in addition to looking at the checks that Moses did before each loan which included asking Mrs J for details of her income and expenditure, I've also looked at the overall pattern of Moses' lending history with Mrs J, with a view to seeing if there was a point at which Moses should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Moses should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mrs J's case, I think that this point was reached by loan 10. I say this because:

- At this point Moses ought to have realised Mrs J was not managing to repay her loans sustainably. Mrs J had taken out 10 loans in over six years. So Moses ought to have realised it was more likely than not Mrs J was having to borrow further to cover a long-term shortfall in her living costs.
- I accept there was a gap in lending before loan 10 was granted. But in this case I don't think this ought to have led to a resetting of the lending chain. I say this because this was Mrs J's largest loan to date, she had been borrowing from Moses for over six years and it had taken Mrs J longer to repay seven of the previous nine loans. But even removing this gap from the total time Mrs J had been indebted this still meant it was her tenth loan in six years of borrowing.
- From the first loan, Mrs J was generally provided with a new loan shortly after the previous loan had been repaid and / or she had loans running concurrently, for example, before loan seven was granted on the same day loan six was repaid. To me, at times, the quick up take in borrowing is a sign that Mrs J was using these loans to fill a long-term gap in her income rather than as a short-term need.
- Mrs J's first loan was for £400 and loan 10 was more than 50% more at £630. At this point Moses ought to have known that Mrs J was not likely borrowing to meet a temporary shortfall in her income but to meet an ongoing need.
- Mrs J wasn't making any real inroads to the amount she owed Moses. Loan 10 was taken out over just over six years after Mrs J's first loan and was to be repaid over a longer term of a year. Her final loan was also the largest capital loan. So, Mrs J had paid large amounts of interest to, in effect, service a debt to Moses over an extended period.

I think that Mrs J lost out when Moses provided loan 10 because:

- the loan had the effect of unfairly prolonging Mrs J's indebtedness by allowing her 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 Mrs J borrowed was likely to have had negative implications on Mrs J's ability to access mainstream credit and so kept her in the market for these high-cost loans.

Overall, I'm upholding Mrs J's complaint about loan 10 and I've outlined below what Moses needs to do in order to put things right.

Putting things right

In deciding what redress Moses should fairly pay in this case I've thought about what might have happened had it not lent loan 10 to Mrs J, as I'm satisfied it ought not to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mrs J 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 reconstruct now accurately. 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 J in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mrs J 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 J loan 10. It isn't clear from the information that has been provided whether loan 10 has been repaid (or not). So, I've made sure the redress reflects that.

If Morses has sold the outstanding debt it should it back if Morses 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 add together the total of the repayments made by Mrs J towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Morses have already refunded.
- B) Morses should calculate 8% simple interest* on the individual payments made by Mrs J which were considered as part of "A", calculated from the date Mrs J originally made the payments, to the date the complaint is settled.
- C) Morses should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mrs J as though they had been repayments of the principal on all outstanding loans. If this results in Mrs J 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. Morses 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. If this results in a surplus, then the surplus should be paid to Mrs J. However, if there is still an outstanding balance then Morses should try to agree an affordable repayment plan with Mrs J.
- E) The overall pattern of Mrs J's borrowing for loan 10 means any information recorded about it is adverse, so Morses should remove the loan entirely from Mrs J's credit file. Morses doesn't have to remove loan 10 from Mrs J's credit file until it has been repaid, but Morses should still remove any adverse information recorded about it.

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

My final decision

For the reasons I've explained above, I'm upholding Mrs J's complaint in part.

Morses Club PLC should put things right for Mrs J as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs J to accept or reject my decision before 9 August 2023.

Robert Walker
Ombudsman