

The complaint

Miss C says Morses Club PLC (“Morses”) irresponsibly lent to her. Miss C says Morses repeatedly lent to her while she was receiving benefits and couldn’t afford the loans. As a result, Miss C got into debt with her other bills as she couldn’t keep up with those payments.

What happened

This complaint is about nine home collected credit loans provided to Miss C between October 2016 and December 2019. Miss C’s borrowing history is as follows:

Loan	Date Taken	Date Repaid	Weekly Instalments	Amount	Weekly Repayment
1	14/10/2016	22/03/2017	33	£400.00	£20.00
2	06/01/2017	16/08/2017	33	£200.00	£10.00
3	22/03/2017	25/08/2017	33	£600.00	£30.00
4	25/08/2017	04/04/2018	33	£800.00	£40.00
5	04/04/2018	12/12/2018	33	£800.00	£40.00
6	12/06/2018	08/05/2018	33	£150.00	£7.50
7	11/12/2018	17/12/2019	33	£800.00	£40.00
8	08/05/2019	£21.01 outstanding*	33	£150.00	£7.50
9	17/12/2019	£1,162.81 outstanding*	34	£800.00	£40.00

*Outstanding balance as at 13 February 2020.

Our adjudicator reviewed Miss C’s complaint and thought that the complaint should be upheld from loan five onwards because the borrowing was becoming unsustainable.

Morses didn’t agree with the adjudicator about loan five but it did offer redress for loans six to nine. For loan five it said Miss C’s income and expenditure didn’t give it any cause for concern. It also said Miss C was using the lending for non-essential spending.

We put the offer to Miss C, but she didn’t want to accept it. And Morses’ comments didn’t change the adjudicator’s opinion about loan five. So, the complaint has been passed to me for a 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.

We’ve set out our general approach to complaints about irresponsible lending - including all the relevant rules, guidance and good industry practice - on our website.

Morses needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Miss C could repay the loans in a sustainable manner.

These checks could consider several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. In the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Morses should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a consumer's 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 *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a level of income);
- the *greater* the number and frequency of loans, and the longer the period during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that Morses was required to establish whether Miss C could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course, the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define sustainable as being without undue difficulties and the customer should be able to make repayments on time, while meeting other reasonable commitments; as well as without having to borrow to meet the repayments. And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

I've carefully considered all the arguments, evidence and information provided in this context and what this all means for Miss C's complaint. Having done so, I am partially upholding the complaint. I'll explain why.

I've looked at the overall pattern of Morses's lending history with Miss C, 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 Miss C's case, I think that this point was reached by loan five. I say this because:

- At this point Morses ought to have realised Miss C was not managing to repay her loans sustainably. Miss C had been indebted to Morses for 18 months. So Morses

ought to have realised it was more likely than not Miss C was having to borrow further to finance day-to-day living expenses – however she was choosing to spend the lending.

- Miss C's first loan was for £400 and loan five was for £800. At this point Morses ought to have known that Miss C was not likely borrowing to meet a temporary shortfall in her income but to meet an ongoing need.
- Miss C's borrowing pattern would suggest the lending was unsustainable for her as I note she often repaid one loan the same day a further loan was taken. As examples, loan one was repaid early on 22 March 2017 the same day that loan three was taken. And loan three was for a larger amount which would suggest that Miss C was borrowing further to repay current borrowing.

This happened again with loan three being repaid the same day that Miss C borrowed a higher amount when she took loan four. Loan five was taken the same day loan four was repaid. This behaviour is consistent with the lending being unsustainable and which proved to be the case as loans eight and nine are outstanding.

- Miss C wasn't making any real inroads to the amount she owed Morses. Loan nine was taken out three years after Miss C's first. And it was for a larger amount. Miss C had paid large amounts of interest to, in effect, service a debt to Morses over an extended period.

I think that Miss C lost out because Morses continued to provide borrowing from loan five onwards because:

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

So, like the adjudicator, I'm also upholding the complaint about loans five to nine and Morses should put things right.

Putting things right

If the outstanding balance due on Miss C's loans has been transferred to a third party Morses should buy the loan/s back if it can. If Morses can't buy the loans back, then it needs to work with the third party to make sure the following is achieved:

- A) Add together the total of the repayments made by Miss C towards interest, fees and charges on all upheld loans without an outstanding balance.
- B) Calculate 8% simple interest* on the individual payments made by Miss C which were considered as part of "A", calculated from the date Miss C originally made the payments, to the date the complaint is settled.
- C) Remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Miss C as though they had been repayments of the principal on all outstanding loans.

If this results in Miss C 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 Miss C. However, if there is still an outstanding balance then Morses should try to agree an affordable repayment plan with Miss C.

E) The number of loans taken from loan five onwards means any information recorded about them is adverse. So, all entries about loans five to nine should be removed from Miss C’s credit file. Morses does not have to remove loans eight and nine from Miss C’s credit file until these have been repaid, but any adverse information recorded about these loans should still be removed.

* HM Revenue & Customs requires Morses to take off tax from this interest. Morses must give Miss C a certificate showing how much tax it’s taken off if he asks for one.

If after doing the above Miss C still has an outstanding balance due, then Morses should try and work together to come to a mutually agreeable repayment plan with Miss C in order to repay what is owed. But I’d remind Morses of its obligation to treat Miss C fairly.

My final decision

I’m partially upholding Miss C’s complaint. Morses Club PLC should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss C to accept or reject my decision before 1 October 2020.

Catherine Langley
Ombudsman