

The complaint

Ms I (by way of a representative) complains Morses Club PLC (“Morses Club”) lent to her irresponsibly.

What happened

Morses Club has told us Ms I had a further loan, taken out on 4 August 2007, but this was sold by a different lender. This loan does not form part of this decision as it appears Morses Club isn’t responsible for the sale. So, I won’t be making a finding about it. The remaining 11 loans, which do form part of this decision, are:

Loan Number	Loan Amount	Received Date	Actual Repayment Date
1*			
2*			
3*			
4*			
5	£150	24/01/2013	25/04/2014
6	£300	28/02/2013	outstanding
7	£300	02/05/2013	outstanding
8	£300	16/05/2013	outstanding
9	£500	04/07/2013	outstanding
10	£250	25/07/2013	outstanding
11	£600	01/08/2013	outstanding

*I understand that Morses Club doesn’t hold any information about loans 1 to 4, as it didn’t sell them.

Morses Club has said that the outstanding balance for loans 6 and 11 was sold to a third party in October 2016. It is my understanding that when the complaint was referred to this Service there was still an outstanding balance to pay on some, or all, of these loans.

Our adjudicator thought this Service could only consider loans 5 to 11 as loans 1 to 4 were sold by a different lender, who I will call Lender B, and not subsequently purchased by Morses Club (who did buy some loans from Lender B). I understand Morses Club has accepted responsibility for loans 5 to 11.

Having reviewed loans 5 to 11, the adjudicator didn’t think Morses Club was wrong to lend loans 5 to 7. But he felt the remaining loans (8 to 11) shouldn’t have been given.

Morses Club accepts that something may have gone wrong when it provided loans 8 to 11. As Ms I hasn’t paid any interest towards these loans, it has explained that no refund of interest will be payable to her. But it has agreed to remove all the interest that was due to be paid for these loans, this means Ms I only has to repay the principal she borrowed.

Morses Club has also agreed to remove adverse information about loans 8 to 11 from Ms I's credit file once the outstanding balance has been repaid.

Ms I disagrees with the adjudicator's assessment. She doesn't think the offer is fair because of the number of loans lent. Ms I also feels that Morses Club would've known how much she was struggling at the time.

As no agreement has been reached, the case 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 short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

To be clear, I am only considering loans 5 – 11 in the loan table above.

Morses Club had to assess Ms I's remaining applications for borrowing to check if she 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 Club's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments and Ms I'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 Club should have done more to establish that any lending was sustainable for Ms I. These factors include:

- Ms I 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);
- Ms I 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);
- Ms I 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 Ms I.

At the time, it appears that Morses Club was regulated by the Office of Fair Trading ("OFT"). The OFT required businesses to lend responsibly, this meant Morses Club needed to check that Ms I could afford to repay her loans sustainably.

The guidance states that "*creditors should take reasonable steps to assess borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner*". And it states that "*this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question*".

I've considered all of the arguments, evidence and information provided in this context, and thought about what this means for Ms I's complaint.

loans 1 to 4

Morses Club has no information at all about these four loans. As a result, it says that it's likely these loans weren't purchased from Lender B, but probably settled prior to the acquisition of loans 5 to 11 (which it does have information about). Ms I also doesn't seem to have any information about the first four loans either.

I think Morses Club has provided a plausible explanation as to why it doesn't think the loans were purchased from Lender B. So, I accept that it's a *possibility* Morses Club didn't purchase them from Lender B, which is now in administration.

Even if I thought Morses Club was responsible for these loans, in the absence of any information about them (such as the loan amount, start date and repayment history) it would likely be difficult to make a finding about them.

Considering this, I am not considering loans 1 – 4 any further.

loans 5 to 7

Morses Club has accepted responsibility for the sale of all remaining loans.

I appreciate Ms I was unable to repay loan 5 on time. I say this because Morses Club has told us it was due to be repaid over 50 weeks – so, when it was repaid in April 2014 it was several weeks over the contractual repayment date. Morses Club has also told us loans 6 and 7 were referred to a third party to collect the balances in October 2016.

But, I've not been able to establish that when loans 6 and 7 were lent in February and May 2013, Ms I was already experiencing repayment difficulties. There is limited information about these loans. So, when she applied for loans 6 and 7, I'm not able to say the repayment history at that time would, of itself, have alerted Morses Club to question whether it should continue to lend or complete additional checks. I've not seen evidence, for example, that Ms I had defaulted on the loans, paid any late fees, or been unable to make regular payments before each lending decision was made.

I've also thought about the affordability of these loans, although there is no information from Morses Club about its checks at the time. Through the representative's complaint submission, Ms I indicated her income and expenditure at the time of these loans left her with a disposable income of around £370. If this information was declared at the time of lending, with the repayment of these loans being over 50 weeks, the weekly instalments for loans 5 to 7 would probably have seemed affordable and sustainable.

I'm sorry to hear that Ms I was struggling financially and repaying these loans has proved difficult. But based on the limited information available, I'm not able to say that loans 5 to 7 were not properly lent.

loans 8 to 11

As Morses Club has agreed that loans 8 to 11 shouldn't have been lent, the issue for me to decide is what Morses Club should do to put things right considering, for example, Ms I's repayment history.

It may help if I explain our approach to putting things right for a consumer. If a business has made an error – either because it accepts one has been made, or we decide something has gone wrong – the starting point, for this service, is that a consumer should be put back into

the position they would've been in had the error not been made. However, that is not always possible especially in cases that involve lending money.

In cases of irresponsible lending, such as this one, this service must acknowledge that the consumer has received a sum of money and has had the benefit of it. So normally we'd expect the consumer to have to repay at least this sum and ask the lender to refund any extra that has been repaid by a consumer, for example interest and charges. We also direct an additional interest payment to the consumer to reflect the loss of use of the funds. This has the effect of providing the consumer with an interest free loan. But sometimes a consumer hasn't repaid the money they've received by the lender. And so, it might be the case that there is still an outstanding balance to pay even when considering any payments made.

Now turning to the specifics of this case, as the adjudicator has explained, because Morses Club shouldn't have given Ms I loans 8 to 11, she shouldn't have to repay more than the principal sum she borrowed or have the loan affect her credit file in a negative way. I understand that Ms I hasn't made any interest payments towards these four loans. If this is still the position, then no refund will be due to Ms I. Morses Club has though agreed to arrange for the interest payable to be removed. It will ask the third party who administers the debt to remove it. So, this will then mean that Ms I will only needs to repay any outstanding principal for loans 8 to 11 that remains. I think this is reasonable in the circumstances as Ms I has had the benefit of this money.

Morses Club has said that once the outstanding balances are repaid it will instruct the third party to remove any negative information about loans 8 to 11 from Ms I's credit file. But as it has agreed these loans shouldn't have been provided, the adverse information recorded on her credit file should be removed as soon as possible.

Considering everything, I don't think I can fairly ask Morses Club to do any more. So, for clarity, I've included below what Morses Club needs to do to put things right.

Putting things right

In deciding what redress Morses Club should fairly pay in this case I've thought about what might have happened had it stopped lending to Ms I from loan 8, 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 Ms I may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between her and this particular lender which she may not have had with others. 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 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 Ms I 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 Ms I would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce Morses Club's liability in this case for what I'm satisfied it has done wrong and should put right.

Morses Club shouldn't have given Ms I loans 8 - 11. Morses says it has sold the outstanding debts, then it should (if it can) buy these loans back and then carry out the following steps. If Morses Club is not able to buy the debts back then it should liaise with the debt owner to achieve the results outlined below.

- Morses Club should remove all unpaid interest, fees and charges from the balance of loans 8 - 11, and treat any repayments made by Ms I as though they had been repayments of the principal on all outstanding loans. If this results in M I having made overpayments then Morses Club 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.
- If there is still an outstanding balance due then the amounts calculated above can be used to repay any balance remaining on any other outstanding loans – assuming Morses Club has repurchased the loans. If this results in a surplus then this should be paid to Ms I. However, if there is still an outstanding balance Morses Club should try to agree an affordable repayment plan with Ms I. But I'd remind Morses Club of its obligation to treat Ms I fairly.
- Morses Club should remove any adverse information recorded on Ms I's credit file in relation to loans 8 -11.

*HM Revenue & Customs requires you to deduct tax from this interest. Morses Club should give Ms I a certificate showing how much tax it has deducted, if Ms I asked for one.

My final decision

My final decision is that I'm upholding Ms I's complaint, in part.

Morses Club PLC should put things right for Ms I as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms I to accept or reject my decision before 31 March 2021.

Robert Walker
Ombudsman