complaint

Mr B complains that Morses Club PLC acted irresponsibly when it provided him with unaffordable “*doorstep loans*”.

background

Mr B took seven home-collected loans with Morses Club between November 2014 and May 2017. This table includes some of the information provided to us by Morses Club about Mr B’s loans.

<table>
<tr><th></th><th>date taken</th><th>principal amount</th><th>repaid</th><th>term (weeks)</th><th>weekly instalments</th><th>highest amounts to be repaid</th></tr>
<tr><td>Loan 1</td><td>05/11/14</td><td>£1,000.00</td><td></td><td>50</td><td>£35.00</td><td>£35.00</td></tr>
<tr><td>Loan 2</td><td>03/07/15</td><td>£300.00</td><td>18/05/16</td><td>50</td><td>£10.50</td><td>£45.50</td></tr>
<tr><td>Loan 3</td><td>06/11/15</td><td>£1,000.00</td><td>09/11/16</td><td>52</td><td>£35.00</td><td>£45.50</td></tr>
<tr><td>Loan 4</td><td rowspan="2">18/05/16</td><td>£200.00</td><td>09/11/16</td><td>33</td><td>£10.00</td><td rowspan="2">£59.00</td></tr>
<tr><td>Loan 5</td><td>£400.00</td><td>15/05/17</td><td>52</td><td>£14.00</td></tr>
<tr><td>Loan 6</td><td>09/11/16</td><td>£1,000.00</td><td>outstanding</td><td>52</td><td>£35.00</td><td>£49.00</td></tr>
<tr><td>Loan 7</td><td>15/05/17</td><td>£500.00</td><td>outstanding</td><td>52</td><td>£17.50</td><td>£52.50</td></tr>
</table>

The amounts of the loans varied. Although Loan 4 was for £200, it was taken on the same day as Loan 5, meaning Mr B borrowed £600 on 18 May 2016. Otherwise the lowest amount Mr B borrowed was £300. On three occasions he borrowed £1,000. The terms varied. Apart from Loan 4 which was taken over 33 weeks, the other loans were taken over 50 or 52 weeks.

When Mr B complained to Morses Club, it didn’t agree that it had been irresponsible. So he brought his complaint to this Service. One of our adjudicators has looked into Mr B’s complaint and recommended that it be upheld in part and that Morses Club put things right. It doesn’t agree and so the complaint has come to me – an ombudsman – for a decision. If Mr B accepts my decision it will be binding on the parties.

my findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Morses Club provided the loans in question while it was authorised and regulated by the Financial Conduct Authority (“FCA”).

The FCA’s Principles for Business set out the overarching requirements which all authorised firms are required to comply with. These included PRIN 2.1.1 R (6) which says: A firm must pay due regard to the interests of its customers and treat them fairly.

The Consumer Credit sourcebook ("CONC") set out the rules and guidance which apply to credit providers like Morses Club when providing loans. CONC 5 sets out a firm's obligations in relation to responsible lending.

Section 5.2.1R of CONC set out what a lender needed to do before agreeing to give a borrower a loan saying:

> *(1) Before making a regulated credit agreement the firm must undertake an assessment of the creditworthiness of the customer.*

And at Section 5.2.1(2) a lender had to consider:

> *(a) the potential for the commitments under the regulated credit agreement to adversely impact the customer's financial situation, taking into account the information of which the firm is aware at the time the regulated credit agreement is to be made; and*
>
> *(b) the ability of the customer to make repayments as they fall due over the life of the regulated credit agreement, or for such an agreement which is an open-end agreement, to make repayments within a reasonable period.*

CONC also included guidance about 'proportionality of assessments'. CONC 5.2.4G(2) saying:

> *A firm should consider what is appropriate in any particular circumstances dependent on, for example, the type and amount of credit being sought and the potential risks to the customer. The risk of credit not being sustainable directly relates to the amount of credit granted and the total charge for credit relative to the customer's financial situation.*

CONC 5.3 contained further guidance on what a lender should bear in mind when thinking about affordability. CONC 5.3.1G(1) saying:

> *In making the creditworthiness assessment or the assessment required by CONC 5.2.2R (1), a firm should take into account more than assessing the customer's ability to repay the credit.*

CONC 5.3.1G(2) then added:

> *The creditworthiness assessment and the assessment required by CONC 5.2.2R (1) should include the firm taking reasonable steps to assess the customer's ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*

CONC 5.3.1G(6) clarified what is meant by "*sustainable*":

> *For the purposes of CONC "sustainable" means the repayments under the regulated credit agreement can be made by the customer:*
>
> *(a) without undue difficulties, in particular:*

(i) the customer should be able to make repayments on time, while meeting other reasonable commitments; and
(ii) without having to borrow to meet the repayments;

(b) over the life of the agreement, or for such an agreement which is an open-end agreement, within a reasonable period; and

(c) out of income and savings without having to realise security or assets; and

unsustainable" has the opposite meaning.

CONC 5.3.1G (4) added that if a firm does take account of income and expenditure in its credit worthiness assessment:

> *(b) it is not generally sufficient for a firm to rely solely for its assessment of the customer's income and expenditure on a statement of those matters made by the customer.*
>
> *(c) its assessment should be based on what the firm knows at the time of the assessment*

Whilst CONC sets out the regulatory framework that authorised consumer credit providers have to adhere to it represents a minimum standard for firms. And - as an ombudsman - I'm also required to take into account any other guidance, standards, relevant codes of practice, and, where appropriate, what I consider to have been good industry practice.

Taking into account the relevant rules, guidance, good industry practice and law, I think there are some overarching questions I need to consider in order to decide what's fair and reasonable in the circumstances of Mr B's complaint:

- Did Morses Club complete reasonable and proportionate checks to satisfy itself that Mr B would be able to repay his loans in a sustainable way?
    - If so, did it make a fair lending decision?
    - If not, would those checks have shown that Mr B would've been able to do so?
- Did Morses Club act unfairly or unreasonably in some other way?

I've outlined above some of the regulations in place at the time Morses Club provided the loans to Mr B. It had to carry out a reasonable and proportionate assessment of whether he could afford to repay them in a sustainable way.

The checks Morses Club did, had to be proportionate to the specific circumstances of each loan. And what is proportionate will depend on a number of factors including things like the consumer's financial history and current situation as well as things such as the amount, type, and cost of the credit being sought.

It is important to note that the FCA didn't, and doesn't, specify exactly how an assessment of affordability is to be carried out but the *"extent and scope"* and the *"types and sources of information to use"* needed to be enough to be able to reasonably assess the sustainability of the arrangement for the consumer.

In other words, the assessment needs to be consumer-focussed. It is not an assessment of the risk to the Morses Club of not recovering its money but of the risk to Mr B of incurring financial difficulties or experiencing significant adverse consequence as a result of the decision to lend.

As set out in CONC, the risk to the consumer directly relates to the particulars of the lending and the circumstances of the consumer. Therefore, a lender's assessment of creditworthiness would likely need to be flexible. That is to say, what is sufficient for one consumer might not be for another, or indeed what might be sufficient for a consumer in one situation might not be so for the same consumer in other situations.

Bearing the above in mind, I would expect an assessment of creditworthiness to vary, dependent on the circumstances. In general, I'd expect a lender to require more assurance, the greater the potential risk to the consumer of not being able to repay the credit in a sustainable way.

Certain factors might point to the fact that Morses Club should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include, *but are not limited to*:

- the *lower* a customer'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 particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time 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 demonstrates that the lending was unsustainable.

So Morses Club was required to establish whether Mr B could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation. 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 – as I've set out above – CONC defines sustainable as being without undue difficulties and in particular 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.

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 what a reasonable and proportionate check should've looked like when Morses Club was in the process of approving the loans for Mr B.

I've only seen limited information about Loan 1. It was for a relatively high amount - £1,000. And it was repayable over 50 weeks at £35 per week. Morses Club tells us that Mr B declared a weekly income of £305. Based on the information I have I can't safely say that Morses Club was irresponsible when it approved this loan and so I'm not upholding Mr B's complaint about it.

However, when Mr B applied for Loan 2 it seems that Loan 1 was still outstanding. This loan was for a smaller amount - £300 but the repayments of £10.50 per week meant that Mr B was going to have to repay £45.50 each week in total for the two live loans. Mr B told Morses Club that his weekly income was £300. So before he paid anything towards his housing or other normal living costs, around one-sixth of his income was going towards repaying Loans 1 and 2. Morses Club did ask Mr B about some of his outgoings. He told it that he paid £125 for housing and £26 for utility bills. But he declared zero for other loans, living costs such as food and transport and "other" outgoings.

Mr B was going to be repaying a significant part of his income towards these two live loans each week. And I don't think it was reasonable for Morses Club to think that he'd be able to do so sustainably on the information it had. From his weekly income of £300 he was going to be left with around £100 from which to pay for his food, transport, other creditors and all other outgoings - for example telephone, internet, clothes, insurances and so on. Morses Club has told us that Mr B declared that he had no reason to believe his circumstances would change in the following twelve months. But I don't think Morses Club was reasonable to conclude he could afford this loan sustainably from the start – from point it was granted.

Around four months after taking Loan 2, Mr B applied for Loan 3. It seems that in the meantime he'd repaid Loan 1. But Loan 3 was again for the relatively high amount of £1,000. On the day he took this loan he repaid £45 towards Loan 2. Since taking Loan 2 he'd been repaying it monthly in cash to the Morses Club agent – usually at £45 per month. Loan 3 was taken over 52 weeks and was due to be repaid at £35 per week. So again Mr B was now required to pay a total of £45.50 every week to Morses Club for his two live loans (Loans 2 and 3). And it had now been a year since he started to borrow from Morses Club.

On this occasion Mr B told Morses Club that his weekly income was £300. He added that he paid £145 for housing and £100 for utility bills – a total of £245. It seems he told the Morses Club agent that his partner paid for the other outgoings. But even if his partner did meet other household expenses, once Mr B paid the rent, utilities and Loans 2 and 3 he would have less than £10 per week left for anything else he needed to pay for. This loan wasn't affordable for him even based on the information Morses Club itself had.

Around six months later on 18 May 2016 Mr B took Loans 4 and 5 and repaid Loan 2 by making a payment of almost £78. Two weeks earlier he'd paid his usual £45 monthly payment on Loan 2 – meaning that in the two weeks before Mr B took Loans 4 and 5 he repaid almost £123. It's unclear why Mr B was approved for two separate loans, over two different terms, on the same day, but the total loan amount was £600 and as Loan 3 was still live he was going to have to find £59 per week to repay Morses Club.

Whilst I note that Mr B's declared weekly income had increased to £350, over half of this was made up of state benefits (£170 "wages" plus £180 "benefits"). And now it seems he was paying £65 towards housing, £70 for food and transport and £28 for "other outgoings" whilst his partner paid for the utility bills.

When Mr B took Loans 4 and 5 he'd been borrowing from Morses Club for over a year and a half without any periods when he wasn't indebted to it. Whilst the amounts of the loans had fluctuated the overall amounts he was having to repay each week were increasing.

I'm satisfied that at the point Mr B took Loans 4 and 5 on 18 May 2016 a pattern of borrowing from Morses Club had developed. And it should have realised that it was more likely than not that Mr B was having to borrow more and more to cover the hole repaying earlier credit was leaving in his finances - and that his indebtedness had increased unsustainably. He wasn't making any real inroads into the amount he owed Morses Club and was going to be indebted to it for another year.

Morses Club shouldn't have provided Loans 4 and 5 and nor should it have advanced £1,000 to Mr B on 9 November 2016 (Loan 6) and £500 on 15 May 2017 (Loan 7). His statement of account clearly shows that the pattern continued.

On the day Mr B took Loan 6 he repaid Loan 3 with a payment of £140 but 5 days before that he'd already paid £140 – a total £280 within five days. And he also repaid Loan 4 on the same day with a payment of £62.96 having paid £40 earlier in November. So to clear those two loans he'd repaid around £383 within the first ten days of November 2016. And he'd made a payment of £56 on Loan 5 – which was still going to be live. In other words Mr B paid Morses Club about £436 just before he borrowed another £1,000 with Loan 6.

This was repeated at the point Mr B took Loan 7. He took this on the day he repaid Loan 5 – (15 May 2017) with a payment of £112 having also paid £56 earlier in May so a total £168 was repaid to Morses Club just before Mr B took Loan 7 for £500. And Loan 6 was still live and with an outstanding balance of £1,085.

I think that Mr B lost out because Morses Club continued to provide loans to him. This had the effect of unfairly extending his indebtedness by allowing him to take expensive credit over a prolonged period - which most likely impacted his ability to access mainstream credit and so kept in the market for these expensive home-collected loans.

I want to reassure Morses Club that I've thought carefully about its response to our adjudicator's assessment. But, having done so I remain of the opinion that it was irresponsible when it provided Loans 2 to 7. I'm not persuaded by its argument that Mr B's borrowing for two and a half years didn't indicate a reliance on its loans. I've explained above why I'm satisfied that Mr B was having to re-borrow over and over to fill the hole left in his finances due to earlier repayments. This cycle of borrowing to repay earlier credit wasn't sustainable and a simple review of his statements of accounts suggests that this was what he was doing.

I've also noted Morses Club's point about the FCA's consultation paper (CP18/43) and its review of the high cost credit market. But as Morses Club will also have seen in the paper, the FCA referred to some existing controls including that firms "*must assess creditworthiness (including affordability) before agreeing any new loan or any significant increase in credit*". And later the FCA added that when making such an assessment firms have to do so on the basis of sufficient information which will be proportionate and relevant to factors such as the costs and the risk of the credit in the individual case. It also added that firms "*also have to monitor consumers' repayment patterns to identify signs of financial distress*" and "*firms must also not encourage a customer to refinance where the commitments are not sustainable or are not in the customer's best interests*". I've outlined at length above the

relevant parts of CONC and would particularly refer Morses Club to sections, 5.2.1(2), CONC 5.3.1G(1), 5.3.1G(2), 5.3.1G(6) and 5.3.1G (4).

Having thought about everything in this case, I'm not persuaded that Morses Club acted responsibly when it provided Loans 2 to 7 to Mr B. So, I'm upholding his complaint about those loans and Morses Club should put things right as set out below.

putting things right

Morses Club shouldn't have given Mr B Loans 2 to 7. I understand that there may be a balance outstanding on Loans 6 and 7. If Morses Club has sold the outstanding debts it should buy these back if it is able to do so and then take the following steps. If Morses Club is not able to buy the debts back then it should liaise with the new debt owner to achieve the results outlined below.

a) Morses Club should add together the total of the repayments made by Mr B towards interest, fees and charges on Loans 2, 3, 4 and 5

b) It should calculate 8% simple interest* on the individual payments made by Mr B which were considered as part of a), calculated from the date he originally made the payments, to the date the complaint is settled.

c) Morses Club should remove all interest, fees and charges from the outstanding balance on Loans 6 and 7, and treat any repayments made by Mr B as though they had been repayments of the principal on any outstanding loans. If this results in Mr B 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.

   Morses Club should then refund the amounts calculated in a) and b) and move to step e)

d) If there is still an outstanding balance after the steps at c) have been completed, then the amounts calculated in a) and b) should be used to repay any balance remaining on the outstanding loans.

   If this results in a surplus then the surplus should be paid to Mr B. However, if there is still an outstanding balance then Morses Club should agree an affordable repayment plan with Mr B.

e) Morses Club should remove any adverse information recorded on Mr B's credit file in relation to Loans 2 and 3. The overall pattern of Mr B's borrowing for Loans 4 to 7 means any information recorded about them is adverse, so Morses Club should remove these loans entirely from Mr B's credit file.

*HM Revenue & Customs requires Morses Club to deduct tax from this interest. It should give Mr B a certificate showing how much tax it has deducted, if he asks for one.

my final decision

For the reasons given above I'm upholding Mr B's complaint in part and I require Morses Club PLC to put things right in the way I've outlined.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 13 March 2020.

EJ Forbes
ombudsman