

## **The complaint**

Miss P has complained that Evergreen Finance London Limited (trading as MoneyBoat.co.uk) gave her a loan she couldn't afford to repay due to her financial situation at the time.

Miss P is also unhappy that MoneyBoat threatened to apply an adverse marker with CIFAS.

## **What happened**

Miss P took one loan from MoneyBoat on 2 April 2018. The loan was for £300 and Miss P needed to make four repayments of around £112.60 per month. The loan was repaid on 24 July 2018.

In our latest assessment the adjudicator didn't think MoneyBoat should've approved Miss P's loan because the information MoneyBoat gathered at the point of application indicated that Miss P was having problems managing her money because she had numerous outstanding short-term loans and other credit debt.

It appears that Miss P agreed with our adjudicator's opinion about the lending decision. But Miss P was unhappy the adjudicator hadn't addressed her complaint about the CIFAS marker. She says MoneyBoat threatened her (and other customers) with the marker to try and persuade them not to continue with the complaint.

MoneyBoat also disagreed and provided the following points to consider;

- The checks undertaken were proportionate especially during the early stages of the lending relationship.
- MoneyBoat says it would be unrealistic for an underwriter to sit and review every line of the credit report prior to lending, especially at the early stages of the relationship – nor has it found anywhere in the regulations or guidance that suggests the regulator (the FCA) that a lender is obliged to do so.

As no agreement could be reached 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.

I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loan was provided.

MoneyBoat 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 P could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts, and the consumer's income and expenditure. With this in mind, 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 MoneyBoat should fairly and reasonably have done more to establish that any lending was sustainable for Miss P. 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 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 clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that MoneyBoat was required to establish whether Miss P could sustainably repay her loan – 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 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. 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 do so without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Miss P's complaint.

When Miss P approached MoneyBoat for her loan, MoneyBoat completed an income and expenditure check, as well as a credit check. Miss P told it she had a monthly income of £1,890 and her monthly expenditure amounted to £1,000.

MoneyBoat further increased Miss P's declared expenditure by adding an additional amount of £288.30 to her expenses. MoneyBoat says it increased Miss P's expenditure as her credit report highlighted a different expenditure amount compared to the amount Miss P disclosed. And/or to bring Miss P in-line with the average expenditure listed on the Common Financial Statement. MoneyBoat noted Miss P's total monthly expenditure as £1,288.30. This would have left her with a disposable monthly income of around £600 from which to meet her monthly repayments of no more than £112.60. So, I think the loan repayments would have appeared affordable based on the headline information MoneyBoat gathered.

However, MoneyBoat has provided the full results of a credit check it completed for Miss P's loan which showed her circumstances were more precarious than the expenditure information she declared.

The results of the credit check showed Miss P taken 73 accounts in the last six years, and she had settled 51 of these accounts. Furthermore, Miss P had opened 16 new accounts within the previous six months before her application with MoneyBoat. This was a significant number of accounts taken within a short period of time and showed that Miss P was opening an average of three accounts per month. The report also showed Miss P had 21 active credit accounts.

This high number of newly opened accounts suggested Miss P was most likely reliant on short-term lending - as I find it difficult to understand why she would need to request several new accounts each month if that weren't the case. This is further demonstrated by the number of credit searches showing on the credit report. MoneyBoat was aware that Miss P had 31 credit searches within the last 6 months, with 16 of these searches having been conducted in the three months prior to her application – an average of 5 per month.

I think there is an argument to say this number of credit searches and new accounts being open was enough to suggest the loan would be unsustainable and so it shouldn't have been lent.

A closer look at the credit check results, indicates that Miss P had a number of outstanding advance against income (short term lending), home credit loans and unsecured loans. Which given the number of the unsecured loans (and the repayment amounts) had led me to conclude its more likely than not some of them were likely to be short term loans. And given what I can see, it seems that Miss P had at least 11 such loans with the repayments taking up the majority of Miss P's income.

On top of this, MoneyBoat on the first page of the credit report, knew that Miss P had around £10,000 debt in loans/instalment credit and £18,000 in revolving credit. And she was using 100% of her available credit.

The overall picture from the credit check showed Miss P was utilising a significant amount of credit up to her limit and had a number of outstanding loans (including short term loans) that took the majority of her income to repay. MoneyBoat knew all of this, which points towards Miss P being reliant on this type of lending and was therefore likely having problems managing her money.

I acknowledge what MoneyBoat says about it being unrealistic for an underwriter to sit and review every line of a credit file prior to lending, especially at the early stages of the relationship. But MoneyBoat cannot simply ignore the information that it has been provided with, especially when the information gathered shows that the loan repayments are potentially a high risk to the customer.

What I would point out is that much of the information I used could be found within the first two pages of the credit report. So a forensic, line by line, review was not necessary to identify the problematic flags in this case.

As part of its comments following our adjudicator's view, MoneyBoat has said it was unable to find guidance in the FCA guidance which shows it had to review all the information as a result of a customer's credit check. The FCA guidance says in CONC 5.2A.7:

*A firm must base its creditworthiness assessment on sufficient information:*

- (1) of which it is aware at the time the creditworthiness assessment is carried out;*
- (2) obtained, where appropriate, from the customer, and where necessary from a credit reference agency, and the information must enable the firm to carry out a reasonable creditworthiness assessment.*

So, my interpretation of this would be that the credit report is information that the lender is aware of at the time the assessment is carried out. So as MoneyBoat was aware of the information given to it by the credit reference agencies, I don't consider it reasonable that a lender would carry out a type of check and then just disregard some of the information it had been provided. I'm satisfied that the information was gathered by MoneyBoat and therefore should be considered as part of the creditworthiness assessment.

## CIFAS

I've thought carefully about this part of the complaint. I believe, that Miss P is referring to the following passage contained within the final response letter she received from MoneyBoat.

*It is worth noting that it would be considered an offence to have obtained funds by deception. If after this response you are suggesting that the information you provided did not accurately reflect your circumstances at the time of sale, then I need to advise you that we reserve the right to pass details of your application on to CIFAS the fraud prevention agency (note that as a result, this information would be utilised by other financial providers for their consideration in future dealings with you).*

But a similar statement passage is also contained within MoneyBoat's acknowledgement email to Miss P's complaint.

Broadly speaking Miss P has two concerns with these passages. Firstly, the wider impact on what another consumer may do in response to seeing this and secondly, the impact on her, if a CIFAS marker was recorded and her reaction to the text.

It is clear Miss P's is concerned and she is troubled about how other consumers may interpret this and the impact on their complaints. But, I have to consider my role and remit when looking at this part of the complaint.

My role is to resolve complaints, in a fair and reasonable way based on the individual circumstances of a case. This effectively means, I'm not in a position to make a finding about how this text could be perceived by other people, and how they may react to it and or/ anything they may do in response to it.

This service isn't the regulator, as Miss P is aware, which means we are only looking at whether MoneyBoat has done anything wrong in her case. And if so, what does it need to do in order to put things right.

I appreciate Miss P will be disappointed by this, and I can see she's put a lot of time and effort in making her submissions. But I don't have the power to consider how other people may react, I can only consider what happened in the circumstances of Miss P's complaint. MoneyBoat could choose to change or amend its procedures that is a matter for them. But I've already explained above, why in this case, it ought to have been aware that Miss P couldn't sustainably take on more lending based on the information that it gathered from the credit reference agencies.

There may be occasions, based on the individual circumstances of a case where a CIFAS referral may be appropriate. But in this case, there is nothing to suggest that a CIFAS marker has been applied against Miss P. Indeed, if one had been applied, I'd have concerns that it was reasonable. Given MoneyBoat's obligations to carry out proportionate checks before lending and what it knew about Miss P's circumstances. But I can't make a further award for something that, as far as I can see MoneyBoat hasn't done.

Miss P also said she realised how difficult it would be to potentially remove the CIFAS marker and she said the thought that information could be registered with left her in tears and it was only the reassurance from her partner that helped her.

As far as I can see, there is no financial loss to Miss P in relation to CIFAS. I've taken on board what she's said about her reaction to this and I have no doubt that she was concerned about the impact any complaint could have on her CIFAS record. But, I don't think in this case, MoneyBoat needs to do any more.

Finally, Miss P has said that she requested her information under a data subject access request (DSAR). And she said potentially some information hasn't been provided to her that she's entitled to. If she has any concerns around this, she'll need to raise these concerns with the Information Commissioner's Office (ICO). The ICO is the body set up to deal with this type of issues, so I say no more about it.

### **Putting things right**

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

I think MoneyBoat were wrong to approve Miss P's loans. So, MoneyBoat should do the following to put things right:

- Refund all interest, fees and charges Miss P paid towards the loan
- Calculate 8% simple interest\* on the individual payments made by Miss P from the date Miss P originally made her payment, to the date the complaint is settled.
- MoneyBoat should remove any adverse information recorded about loan 1 from Miss P's credit file.
- 

\*HM Revenue & Customs requires you to deduct tax from this interest. MoneyBoat should give Miss P a certificate showing how much tax is deducted, if she asks for one.

### **My final decision**

For the reasons I've explained above, I'm uphold Miss P's complaint in part.

Evergreen Finance London Limited (trading as MoneyBoat.co.uk) should put things right for Miss P as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss P to accept or reject my decision before 18 August 2021.

Robert Walker  
**Ombudsman**