

The complaint

Mr E says that Evergreen Finance London Limited trading as Moneyboat:

- didn't follow the FCA guidance in relation to helping customers during the Covid-19 pandemic; and
- didn't calculate the loan interest correctly, and under the terms of the contract, when he requested a payment freeze; and
- lent to him irresponsibly.

What happened

This complaint is about nine loans Moneyboat provided to Mr E between September 2018 and February 2020.

loan number	date started	amount borrowed	term (days)	date ended
1	23/09/2018	£200	40	31/10/2018
2	31/10/2018	£400	120	31/12/2018
3	07/01/2019	£300	52	31/01/2019
4	04/02/2019	£400	116	04/02/2019
5	07/03/2019	£400	113	28/06/2019
6	08/07/2019	£400	115	30/09/2019
7	02/10/2019	£400	181	31/10/2019
8	04/11/2019	£600	116	28/02/2020
9	28/02/2020	£600	182	outstanding

Our adjudicator didn't uphold some parts of Mr E's complaint. She thought that Moneyboat had followed the guidance in relation to helping customers during the Covid-19 pandemic and it had calculated the interest on the loans correctly.

But she thought the irresponsible lending part of Mr E's complaint should succeed. She said that the credit checks that Moneyboat had done showed that he was in financial difficulty right from the start. And from loan 6 onwards the lending pattern itself became harmful.

Moneyboat disagreed with the adjudicator's opinion. It didn't comment on the substance of the complaint. But rather it said that the irresponsible lending part of the complaint hadn't formed part of the complaint that Mr E initially made to it. And as it hadn't considered this part of Mr E's complaint this service shouldn't look at it.

As no agreement has been reached the complaint has been passed to me.

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 of the relevant rules, guidance and good industry practice - on our website.

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 Mr E 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 the consumer. These factors include:

- 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 clearly demonstrates that the lending was unsustainable.

And the loan payments being affordable on a strict pounds and pence calculation might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. The industry regulator 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. 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.

Applying this to the circumstances of this particular complaint, I have reached the same outcome as our adjudicator, for essentially the same reasons. I've decided to uphold Mr E's complaint in part and I've explained why below.

Mr E didn't disagree with our adjudicator's opinion about the customer service he received during the Covid-19 pandemic and how interest on the loans was calculated when he was having difficulty making the repayments. Because of this I don't think there is any ongoing disagreement about these issues. So, I won't comment further on them, save to say I agree with what the adjudicator said for the same reasons.

I've firstly considered the points Moneyboat made in response to the adjudicator's opinion. It didn't comment on the substance of what the adjudicator said. But Moneyboat did say that it hadn't had the opportunity to properly consider this complaint before the opinion was issued.

It does seem that the first time Mr E made an irresponsible lending complaint was on this service's complaint form. So Moneyboat hadn't looked at this part of Mr E's complaint when

Mr E brought it here. But we did provide the complaint form to Moneyboat so it would have been aware that Mr E was making an irresponsible lending complaint then. And Moneyboat also had a significant amount of time to comment on the adjudicators findings before the complaint has been passed to me. And we have explained why we considered this aspect of Mr E's complaint. Overall, I don't think it's unreasonable that I issue my decision at this point

Turning to Mr E's irresponsible lending complaint. Our adjudicator thought proportionate checks for would've shown Mr E couldn't have repaid the loans in a sustainable manner. I have independently reviewed the evidence of Mr E's income and expenditure and have come to the same conclusion.

This is because the credit checks that Moneyboat did before approving loan 1 showed that Mr E had a large amount of other debt. And he was having significant problems repaying this. There were recent defaults and poor payment markers added to his file before loan 1 was approved.

Going forward the number of accounts that Mr E opened increased significantly over the time Moneyboat lent to him and his overall financial situation seemed to worsen. Moneyboat had information that showed all of this. So, I don't think it was responsible to approve loans 1 to 5.

In addition to this I've also considered the pattern of lending up to loan 6 and I think the lending history and pattern of lending itself clearly demonstrates that further lending would likely be unsustainable. So, I think Moneyboat was also irresponsible to continue lending after this point.

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 lent to Mr E, 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 Mr E 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 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 Mr E 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 Mr E 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.

Moneyboat shouldn't have given Mr E loans 1 to 9.

If Moneyboat has sold any outstanding debts Moneyboat should buy these back if it is able to do so and then take the following steps. If Moneyboat is not able to buy the debts back then Moneyboat should liaise with the new debt owner to achieve the results outlined below.

A) Moneyboat should add together the total of the repayments made by Mr E towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.

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

C) Moneyboat should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr E as though they had been repayments of the principal on all outstanding loans. If this results in Mr E having made overpayments then Moneyboat 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. Moneyboat 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 Mr E. However if there is still an outstanding balance then Moneyboat should try to agree an affordable repayment plan with Mr E. Moneyboat shouldn't pursue outstanding balances made up of principal Moneyboat has already written-off.

E) Moneyboat should remove any adverse information recorded on Mr E's credit file in relation to loans 1 to 5. The overall pattern of Mr E's borrowing for loans 6 to 9 means any information recorded about them is adverse, so it should remove these loans entirely from Mr E's credit file. Moneyboat does not have to remove loan 9 from Mr E's credit file until it have been repaid, but Moneyboat should still remove any adverse information recorded about this loan.

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

My final decision

For the reasons I've explained, I uphold Mr E's complaint.

Evergreen Finance London Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr E to accept or reject my decision before 9 August 2021.

Andy Burlinson
Ombudsman