

## **The complaint**

Miss D has complained that Evergreen Finance London Limited (trading as MoneyBoat) held her liable for a loan which was taken out fraudulently in her name.

## **What happened**

In 2019, a series of substantial loans were applied for in Miss D's name. Some of these went through, while other applications were blocked due to concerns of impersonation.

Each of the successful loan applications were paid into Miss D's account, then immediately transferred to her partner at the time (now ex-partner). One of these loans was an £800 one from Evergreen.

Miss D reported the loan as fraudulent. She explained her ex-partner had used spyware to access her computer and accounts. He'd applied for loans in her name, then transferred the money to himself. Miss D was extremely distressed.

The other loan companies looked into things and eventually accepted this was a case of identity fraud. But Evergreen held Miss D liable for the £800 loan. They said the loan had been applied for using some of Miss D's correct details, had been paid into her bank account, and they'd had an email from her work address. They suggested Miss D had been negligent in allowing her ex-partner to access her account, whereas they said they'd acted in good faith when they gave out the loan.

Evergreen did agree to remove the interest on the loan, and agreed to stop reporting it on Miss D's credit file if she paid off the capital. So to avoid further damage to her credit, Miss D paid off the capital herself. She came to our service.

Our investigator looked into things independently. They asked Evergreen for basic evidence to substantiate that Miss D *had* agreed to this loan, but did not receive this. They upheld the complaint. They found that there was a plausible and likely way the ex-partner could have done this without Miss D's permission. The other lenders involved had looked at the evidence and confirmed this was a case of ID theft. There were entries on CIFAS, the national fraud database, backing this up. Miss D had not benefitted from the loan as the money had been transferred to the ex-partner straight away. And given what had happened, it was unlikely she'd ever consented to the loan.

Evergreen didn't agree. It felt it hadn't had sufficient time to consider the complaint. It said the loan application had passed its checks. It received an email from Miss D's work address and a payment from her account. It suggested the other lenders had only written off their loans to avoid hassle. It pointed out that Miss D had withdrawn the police investigation in order to try to get a civil settlement. It accused Miss D of having either fabricated the matter or of trying to "double-dip" her compensation. It felt it had done a thorough investigation and acted fairly, and felt we were taking Miss D's word for things. It suggested that if we upheld this case, it would have to refund just about every customer.

The complaint was passed to me to decide.

I also asked Evergreen for basic evidence such as the full application data, agreement, evidence of the checks it said it carried out, and relevant notes and recordings. However, I also did not receive a reply.

I sent Miss D and Evergreen a provisional decision on 6 October 2021, to explain why I thought the complaint should be upheld. In that decision, I said:

*Based on what I've seen so far, I agree with our investigator that Evergreen has got things wrong here.*

*First of all, I understand that Evergreen felt it had not had the proper opportunity to deal with this complaint. But I can see that Miss D expressed her dissatisfaction sufficiently, and later even asked for a final response so she could come to our service. At the latest, we made Evergreen fully aware of Miss D's complaint in January 2021. So Evergreen has had far more than the required 8 weeks to look into this. And this case has come to us from an appropriate customer, against a firm we cover, about an activity we cover, within the required time. I am satisfied that this complaint is within our jurisdiction.*

*In terms of the loan at hand, I can understand where Evergreen is coming from in some of its arguments. However, I think the core issue here is that it has approached the matter from the wrong angle. Evergreen's position seems to be, in essence, that it should be able to hold Miss D liable for the loan unless she can prove that it wasn't hers. When in fact, the onus is on Evergreen to show that it was hers and that it had the right to take payments from her. If it cannot do that, then it cannot hold her liable. This should hopefully be fairly intuitive.*

*Thus far, Evergreen has provided relatively little evidence that this was Miss D's loan, despite our repeated requests. It has not even given us the full application data, let alone copies of the checks which it alleges it carried out.*

*On the other hand, I've seen text conversations where Miss D's ex-partner admitted to using spyware to access her computer and accounts, and admitted to taking out these loans in her name without her consent. I've also listened to the recording of a call where it seems he spoke with one of the other lenders involved and confessed.*

*We have looked at what some of the other lenders did and they did not simply write things off to avoid hassle – as Evergreen has suggested – but found the evidence supported that these loans were not genuine. Importantly, Evergreen could have spoken to these other lenders to compare findings, and could have looked at what they'd put on the fraud database. But instead, it seems to have simply dismissed them writing off substantial loans as "avoiding hassle" without any real basis to support this assertion.*

*From what I understand, this Evergreen loan was applied for using some genuine details of Miss D's, such as her name and date of birth. But that doesn't show it was hers. It's unsurprising that her partner would have known such details. Importantly, it looks like the phone number and primary email address given were not Miss D's, which makes sense if it was someone else applying for the loan in her name. Other loan companies found that these contact details were not linked to Miss D when it ran checks on them, and I understand that those details are now registered on the national fraud database.*

*I understand Evergreen's point that it received an email from Miss D's work address. But since it seems her ex-partner had access to her computer and had installed spyware, it's not surprising if he had access to her email too. It's worth bearing in mind this happened during the pandemic when Miss D would have been accessing her work email remotely. Evergreen only received the one email from Miss D's work account, which then explicitly told them to only use the false email address from now on. I think it's likely this was her ex-partner.*

*Similarly, I understand that Evergreen paid the loan into Miss D's bank account and received a payment in return. But that's not surprising either if Miss D's ex-partner had gained access to her bank account. I can see that the loan money was immediately transferred to the ex-partner, which fits with his apparent confession.*

*Evergreen argued that Miss D was somehow negligent here. But I don't see that she was. I fail to see how she could have reasonably been expected to predict or prevent her ex-partner putting spyware on her computer. I'm afraid its suggestion of negligence comes across as another unfounded assertion on Evergreen's part. Further, even if Miss D had been negligent, that probably wouldn't be relevant here. Broadly speaking, Evergreen cannot hold fraud victims liable for loans they didn't apply for or benefit from just because they didn't keep their details safe enough.*

*Evergreen also argued that it had provided the loan in good faith. But again, I'm afraid that's not relevant. It cannot hold a fraud victim liable for a loan they did not take out just because it provided the loan in good faith. Again, this should hopefully be intuitive.*

*Miss D provided clear and consistent testimony about what happened. What she's told us is very plausible, and I've not found a good reason to disbelieve her. It's backed up by written and audio evidence of the ex-partner's admission, as well as independent investigations by a number of lenders and our service. She reported the matter to the police and Action Fraud, and also tried to recover money from the perpetrator through civil means, which again helps demonstrate that her claim is genuine. Lastly, I can see that after Miss D says she discovered what happened, her doctor signed her off from work – having diagnosed her with a severe form of stress borne from shock and trauma. This also supports her testimony.*

*Evergreen pointed out that Miss D withdrew her case with the police, and I understand why it thought to raise this. It looks like Miss D did that to try to recover at least some of her losses through civil action – which I can completely understand. It seems that Miss D's ex-partner not only took out tens of thousands of pounds of debt in her name, but also spent substantial amounts of Miss D's own money on gambling. I can see that the ex-partner was recovering some of the money from the gambling companies. Miss D explained that she faced a choice of either continuing with the police investigation and potentially getting none of her money back, or co-operating with her ex-partner's lawyers to recover some of the money lost to gambling. Her choice seems reasonable to me and I don't think it undermines her testimony.*

*Evergreen also suggested that Miss D was trying to double her compensation by receiving it from both Evergreen and her ex-partner. It does not appear to have looked into this point and has not provided anything to substantiate this assertion. I should explain that Evergreen cannot hold customers liable for loans they did not take out purely on the basis that they might have received compensation elsewhere.*

*We spoke to Miss D about this and she was most candid with us about what was going on. Firstly, I should explain that the action her ex-partner took was against a gambling firm, to recover money he spent on gambling – it was not a duplication of Miss D's action regarding this Evergreen loan. Secondly, from what I understand the ex-partner owes Miss D many tens of thousands of pounds, and has at present repaid around two-thirds of this. So given the amounts involved, I don't think there's a significant risk that Miss D will receive too much overall if Evergreen refunds a loan of only £800. Lastly, I should point out that I do not have any remit over the dispute between Miss D and the perpetrator, nor Evergreen and the perpetrator. What I am primarily here to look at is whether this loan was genuine, and whether Evergreen can hold Miss D liable for it. I don't think it was genuine, and so I don't think Evergreen can hold her liable.*

*Evergreen suggested that if we uphold this case, then all of its customers could claim refunds. But this case is quite specific. This is a situation where, to list some examples:*

- Evergreen has not provided basic evidence to show this loan was genuine;*
- The loan was applied for using false contact details which I understand are registered on the national fraud database;*
- There is a plausible and likely explanation for how the fraud happened without the consumer's consent;*
- There appears to be both a written and audio confession from the perpetrator;*
- The consumer didn't benefit from the funds as they were transferred to the perpetrator almost straight away;*
- There is a clear and consistent pattern of fraud more widely;*
- A number of other lenders have made their own investigations and concluded that this was a case of ID theft;*
- The consumer provided clear, consistent, and plausible testimony; and-*
- The consumer reported things to the police and Action Fraud and pursued a civil claim against the perpetrator.*

*In this decision I have only considered this matter, and not any of Evergreen's other loans with other customers. But I should think that this situation is not identical across all of its customers.*

*Taking into account everything that's been said and provided, I'm not currently persuaded that Miss D consented to this loan. So I don't think Evergreen can hold her liable for it, and it cannot withhold the money she lost to pay for it.*

*I do appreciate that Evergreen took the interest off this loan and committed to removing it from Miss D's credit file once it was paid. But I don't agree with Evergreen that it did a thorough enough investigation or acted fairly enough overall. For example, it could have looked into why all the other lenders had concluded their loans were fraudulent, and could have looked into the information registered on the national fraud database. Instead, it made unfounded assertions that those lenders were just avoiding hassle. It made similarly unfounded accusations against Miss D, some of which were of a rather harsh nature. It approached the case from an unreasonable angle and held a customer liable for a loan which it does not appear to be able to evidence they actually agreed to or benefitted from. It failed to adequately address Miss D's complaint and failed to adequately co-operate with our service, which delayed things. All-in-all, it added significant stress for Miss D and caused her further trouble and upset when she was already in an awful situation. I agree with our investigator that Evergreen should pay Miss D some compensation to acknowledge its errors and the impact of them.*

I said I'd consider anything else anyone wanted to give me – so long as I received it by 3 November 2021. Evergreen didn't add anything further. Miss D sent in a copy of a further email from her ex-partner where he admitted he'd stolen money from her, as well as correspondence from a gambling rehabilitation clinic which confirmed her ex-partner's gambling addiction issues.

### **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.

Evergreen has not added any new evidence or arguments. And Miss D has added evidence which only further supports her testimony. So having reconsidered the case, I've come to the same conclusion as before – that Evergreen cannot hold Miss D liable for this loan.

### **Putting things right**

I direct Evergreen Finance London Limited to:

- Refund any payments Miss D made towards this loan;
- Pay simple interest to Miss D on each of her payments, at the rate of 8% simple a year, payable from the date they were taken until the date they're returned<sup>†</sup>. This is to compensate Miss D for the time she didn't have her money;
- Disassociate Miss D from the loan and not pursue her for it in future;
- Remove any trace of this loan from her credit file, if any remains; and-
- Pay Miss D £200 compensation for the trouble and upset it caused.

† HM Revenue & Customs requires Evergreen to take off tax from this simple interest. Evergreen must give Miss D a certificate showing how much tax it's taken off if she asks for one. Miss D can claim back the tax from HMRC if she does not pay tax.

### **My final decision**

I uphold Miss D's complaint, and direct Evergreen Finance London Limited to put things right in the way I set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss D to accept or reject my decision before 2 December 2021.

Adam Charles  
**Ombudsman**