

The complaint

Mr G complains Evergreen Finance London Limited trading as MoneyBoat.co.uk (MoneyBoat) gave him loans that he couldn't afford to repay.

Mr G also says that after he told MoneyBoat he was having difficulties and after doing so it increased the amount he had to repay for the final loan.

What happened

Mr G took three loans from MoneyBoat and an overview of the lending relationship is outlined below:

loan number	loan amount	agreement date	repayment date	monthly instalments
1	£200.00	20/06/2018	31/07/2018	2
2	£200.00	06/02/2019	31/07/2019	6
3	£500.00	07/08/2019	outstanding	6

Based on the statement of account provided to the Financial Ombudsman in June 2021 by MoneyBoat an outstanding balance remained due for loan 3. But, in response to the adjudicator's first assessment Mr G told us the balance had been repaid in full.

Following Mr G's complaint MoneyBoat wrote to him with a final response letter outlining why it wasn't going to uphold his complaint.

Unhappy with this response, Mr G referred his complaint to the Financial Ombudsman.

Our adjudicator initially reviewed Mr G's complaint and she didn't uphold it. She said the checks carried out were proportionate before each loan was approved and there was no indication that these loans may have been unsustainable for Mr G.

Mr G didn't agree with the outcome, in summary he said;

- Loan 3 was repaid in July 2021.
- Mr G explained that he ended up repaying nearly £1,000 to MoneyBoat towards loan 3. This was more than he would've repaid it had he been able to repay the loan in line with the credit agreement.
- Mr G says he wasn't treated fairly with regards to the final loan.

The adjudicator went back to MoneyBoat to ask for some comments in relation to what Mr G had given in response to the view.

After a number of months, MoneyBoat explained the following to the adjudicator.

- interest is calculated daily on any outstanding balance and this is in line with the terms and conditions of the loan.

- Had Mr G repaid the loan in line with the terms and condition he would've repaid a total of £394.55 in interest.
- However, due to late payment Mr G paid an additional £90.45 in interest and one late fee of £15.
- Although MoneyBoat acknowledged that Mr G had contacted it before the first payment due for loan 3 was made, Mr G then failed to make payment in August 2019 or September 2019. The October 2019 payment was made through a link sent to him and then from that date, all payments were made as expected.

Following these comments, the adjudicator issued a second assessment. In this assessment she said the following:

- She still thought it was reasonable for MoneyBoat to have advanced the three loans to Mr G.
- Shortly after loan 3 was advanced Mr G contacted MoneyBoat asking for a repayment plan.
- She didn't think that MoneyBoat had acted fairly or treated Mr G with forbearance when thinking about what the industry regulator says (The Financial Conduct Authority (FCA)) in the Consumer Credit Sourcebook (CONC).
- The adjudicator explained that Mr G had told MoneyBoat about his difficulties which were made worse by the COVID-19 pandemic and so it wasn't fair for the extra interest and late fee to have been applied to the account balance.

Mr G didn't have any further comments for the adjudicator after the second assessment was sent.

MoneyBoat didn't respond to the adjudicator's second assessment.

As no agreement has been reached, the case was passed to me for a decision. I then issued a provisional decision explaining why I was intending to uphold the complaint in part but offered slightly different redress to what the adjudicator offered.

A copy of the background to the complaint and my provisional findings follow this in italics and form part of this final decision.

What I said in my provisional decision

What I've provisionally 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 the relevant rules, guidance and good industry practice - on our website.

MoneyBoat had to assess the lending to check if Mr G could afford to pay back the amount he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. MoneyBoat'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 Mr G'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 MoneyBoat should have done more to establish that any lending was sustainable for Mr G. These factors include:

- Mr G 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);
- Mr G 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);
- Mr G 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 Mr G.

MoneyBoat was required to establish whether Mr G could sustainably repay the loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr G was able to repay his loans sustainably. But it doesn't automatically follow that this is the case.

The Financial Conduct Authority's (the industry regulatory) in the Consumer Credit Sourcebook ("CONC") states payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

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

Mr G's complaint has been dealt with in two parts, firstly dealing with what happened when the loans were issued and secondly what happened when Mr G told MoneyBoat about his financial difficulties.

Unaffordable Lending

Before I look at these loans, it's worth noting that there are two periods of lending. This is because there is a significant gap after Mr G repaid loan 1 before he returned for further lending for loans 2 and 3.

This is key, because by having two chains of lending loan 2, in effect becomes loan 1 in the second chain. I think it would've been reasonable in these circumstances for MoneyBoat to have considered the application for loan 2 afresh meaning as the first loan in a new loan chain

In order to repay loan 1, Mr G had to make two payments of around £117, for loan 2, six repayments of around £59 and finally, for loan 3, six payments of around £149. And so, it was these sums that MoneyBoat needed to see that Mr G was likely to be able to afford. In order to do this, and as I've set out above, MoneyBoat was required to carry out a proportionate check.

For these loans Mr G declared income of between £1,269 and £1,400. He also declared he had between £725 and £850 a month for expenditure. MoneyBoat following its checks increased Mr G's expenditure by between £40 and £191 for each loan.

Overall, MoneyBoat calculated for loan 1 he had £352 of monthly disposable income and £438 for loan 2 and £600 for loan 3. These amounts are more than enough to afford the monthly repayment amounts Mr G was committed to repaying.

I also don't think the credit checks results which I've seen would've prompted MoneyBoat to have either carried out further checks or led it to the conclusion that these loans would be unsustainable for Mr G.

There was also nothing else in the information that I've seen that would've led MoneyBoat to believe that it needed to go further with its checks – such as verifying the information Mr G had provided.

Given it was still quite early on in the lending relationship, I think it was reasonable for MoneyBoat to have relied on the information Mr G provided along with the income and expenditure figures (and credit search) to show that Mr G had sufficient disposable income to afford the repayments he was committed to making. So, like the adjudicator I'm not upholding Mr G's complaint about these loans.

I'm therefore intending to not uphold Mr G's complaint about this lending.

Payment plan

It's worth mentioning at this point that although this element of the complaint wasn't mentioned in the final response letter, Mr G did mention this part of his complaint on his complaint form when it was referred to the Financial Ombudsman in June 2021, and the issues of repayment problems are intrinsically linked to the lending decisions that MoneyBoat made.

The adjudicator partly upheld Mr G's complaint about this element of it, and I agree and I've explained why below.

MoneyBoat says, in effect it hasn't done anything wrong because the terms and conditions allow it to apply interest at a daily rate. I've looked at the loan agreement for the third loan and I can see the following condition:

12. Charges:

In the event of non-payment or default by you in breach of this Agreement, we reserve the right to charge:

- a. an initial missed payment fee of £15.00 should we fail to receive the agreed payment within three days from the agreed repayment date; and*
- b. interest on all unpaid principle at the rate of 0.7% per day subject to the total amount of interest payable under this agreement not exceeding 100% of the amount of credit provided, including all interest, fees and charges.*
- c. in the event that we issue court proceedings against you for the amount that you owe, we may also recover from you any costs or fees incurred in relation to the court proceedings.*

Had Mr G repaid loan 3 on time and in accordance with the payment schedule outlined in the credit agreement, he would've repaid a total of £894.55. In effect repaying £394.55 of interest.

However, MoneyBoat says as a result of the repayment plans and missed payments it added an extra charge of £15 as well as additional interest of £90.45. In total Mr G has now repaid £1,000 towards a £500 loan. This was the maximum he could've been charged under

the FCA's cost cap which has been put in place for this type of product.

In order to see whether this extra interest was fairly charged, I have also considered the industry guidance and I'd have expected MoneyBoat to follow the guidance when treating a customer with forbearance. The relevant section is CONC 7.3.4 at the time of these loans says:

A firm must treat customers in default or in arrears difficulties with forbearance and due consideration.

CONC then goes on to provide some examples of what treating a customer with forbearance may look like. CONC 7.3.5 says:

Examples of treating a customer with forbearance would include the firm doing one or more of the following, as may be relevant in the circumstances:

(1) considering suspending, reducing, waiving or cancelling any further interest or charges (for example, when a customer provides evidence of financial difficulties and is unable to meet repayments as they fall due or is only able to make token repayments, where in either case the level of debt would continue to rise if interest and charges continue to be applied);

[Note: paragraph 7.4 (box) of ILG]

(2) allowing deferment of payment of arrears:

(a) where immediate payment of arrears may increase the customer's repayments to an unsustainable level; or

(b) provided that doing so does not make the term for the repayments unreasonably excessive;

(3) accepting token payments for a reasonable period of time in order to allow a customer to recover from an unexpected income shock, from a customer who demonstrates that meeting the customer's existing debts would mean not being able to meet the customer's priority debts or other essential living expenses (such as in relation to a mortgage, rent, council tax, food bills and utility bills).

I can see from the statement of account provided that Mr G made monthly repayments towards the balance of loan 3 every month from October 2019 – paying initially £35. Then from October 2020 Mr G paid £50 per month before increasing the repayments to £70 from April 2021. As far as I can see MoneyBoat was happy to accept these repayments towards paying down the money he owed.

I've also considered the notes MoneyBoat has provided in order to see what it knew about Mr G's financial situation and at what point in time this was.

I can see that Mr G contacted it on 28 August 2019. In his contact, he explained that his partner was ill and was self-employed and so paying the amounts he had agreed to wasn't possible and he asked for a repayment plan.

On the same day MoneyBoat showed it was willing to negotiate a repayment plan with Mr G because it asked how much he could afford – and Mr G said £35 would be affordable for him. The plan was set up for three months, with the agreement that the payments would be made on the first of each month.

However, I can see no payment was made in September 2019 as could've been expected under the terms for the plan. However, it is worth noting that the contact was first made right at the end of August 2019 so there may or may not have been some confusion around when the payment was made and / or Mr G may not immediately have had the money available.

Whatever the reason was, I don't think given what MoneyBoat knew about his circumstances that any late fees or extra interest should be charged here given that CONC says consideration should be given for waiving or cancelling further interest.

I can see in July 2020 when Mr G's repayment plan was ending MoneyBoat contacted him to let him know and to see whether he could pay a larger sum each month. Mr G is clear in his response, that since the last plan his situation had deteriorated. He was now on furlough as a result of the pandemic and he made it clear that the £35 was too high an amount for him.

However, and MoneyBoat hasn't explained why, upon hearing that the £35 wasn't acceptable to Mr G, it then proposed the same amount again - £35 per month. It isn't clear to me, how after being told that this sum wasn't affordable why MoneyBoat was offering Mr G the same amount again. I do have concerns, given what CONC says about treating a customer in forbearance with due consideration that this happened here.

MoneyBoat was on notice of a change in circumstances and didn't adjust the help and support accordingly, The fact that Mr G did continue to make that level of repayment for the next three months shouldn't and doesn't set aside the fact that I don't think he was treated fairly here.

As an aside, and to be clear this doesn't change the outcome of the complaint, that as a result of the pandemic the FCA had put in place some temporary measures to help people who were impacted by for example being on furlough. But I don't need to say more than this, because overall, I'm satisfied the outcome that I'm reaching is consistent with the approach that is outlined in CONC.

In October 2020 a similar situation arose. Mr G had told MoneyBoat he was still on furlough and explained he couldn't afford to pay more than £35 per month. MoneyBoat asked for an income and expenditure form to be completed – which I think was a reasonable request at the time. Mr G did this and returned it to MoneyBoat within a few hours.

It was at this point, when there was communication between MoneyBoat and Mr G about his income and expenditure form that it applied a £15 late fee, it isn't clear why MoneyBoat has done this because the notes are clear in explaining that MoneyBoat was asking for further information from Mr G in order to establish what he could afford per month.

At this point in time, I don't consider it reasonable or fair to have levied a late fee onto the account given the history of repayment plans and what was currently under discussion with Mr G about his monthly repayment.

In summary, MoneyBoat knew of Mr G's financial problems fairly early on after loan 3 was advanced. I agree, initially that it treated him fairly by agreeing to a payment plan. However, despite knowing of Mr G's financial problems which seem to have started with his partner falling ill and then made worse by the pandemic MoneyBoat continued to apply charges to the outstanding balance. I accept, given the wording of the terms and conditions that MoneyBoat could've done this.

But, given the wording in CONC and the requirement to treat Mr G fairly and with forbearance I don't consider the extra interest and charges added to be fair or in any way

helpful to Mr G – these extra charges have increased his overall indebtedness during a time of financial hardship.

In effect, MoneyBoat has penalised him for needing a repayment plan and therefore asking him to pay even more to it. I don't think is fair or right to have done this. I think what would've been fairer, in the circumstances of this case, to have capped Mr G's total cost to MoneyBoat as outlined in the credit agreement for the third loan. So, any amount paid above and beyond that should be refunded.

I also consider, given what I've seen in the notes and the way that Mr G was treated by MoneyBoat that there has been a level of distress and inconvenience caused. Especially, in July and October 2020 when knowing Mr G was already having problems – because he was on a repayment plan and then being told he was furloughed the only solution that MoneyBoat offered was to extend a repayment amount Mr G had told them was unaffordable.

It's clear that given everything that was going on Mr G would've been having a difficult time and the help and support offered by MoneyBoat didn't in my view entirely help the situation. Mr G says he's been treated unfairly and I agree with him, not just that I do feel that he's been caused additional distress and inconvenience as a result and I've outlined below what I think MoneyBoat should pay in recognition of that.

I'm intending to partly uphold Mr G's complaint and I've outlined below what MoneyBoat needs to do in order to put things right for him

Response to the provisional decision

Both Mr G and MoneyBoat were asked to provide anything further for consideration as soon as possible but no later than 19 May 2022.

Neither Mr G or MoneyBoat responded to the provisional decision and as the deadline for a response has now passed, I see no reason to delay in sending this 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.

As no new arguments or comments have been provided, I see no reason to depart from the findings that I reached in the provisional decision. I still think MoneyBoat didn't treat Mr G fairly or with forbearance once it was made aware of his financial difficulties.

I've outlined below what MoneyBoat should do in order to put things right.

Putting things right

In order to put things right MoneyBoat should carry out the following;

- refund any interest, fees and charges applied to the loan above the total amount Mr G was contracted to pay.
- To the refunded amount MoneyBoat should add 8%* simple interest from the time of the overpayments became due to the date of settlement.
- Pay Mr G directly £100 for the distress and inconvenience this matter has caused.

*HM Revenue & Customs requires MoneyBoat to take off tax from this interest. MoneyBoat

must give Mr G a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr G's complaint in part.

Evergreen Finance London Limited should put things right for Mr G as direct above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 22 June 2022.

Robert Walker
Ombudsman