

The complaint

Miss K complains that Evergreen Finance London Limited trading as MoneyBoat.co.uk (MoneyBoat) didn't carry out proportionate affordability checks before it granted her loans. Had it done so, MoneyBoat would've discovered that she couldn't afford to repay them.

What happened

Miss K was advanced seven instalment loans by MoneyBoat and a summary of her borrowing follows.

loan number	loan amount	agreement date	repayment date	number of instalments	instalment amount
1	£250.00	11/12/2017	01/02/2018	4	£85.24
2	£600.00	20/03/2018	18/10/2018	6	£184.63
3	£400.00	01/02/2021	17/03/2021	2	£247.78
4	£400.00	22/03/2021	15/05/2021	3	£188.89
5	£200.00	12/06/2021	18/06/2021	2	£136.62
6	£200.00	24/06/2021	16/07/2021	2	£127.35
7	£400.00	22/07/2021	outstanding*	4	£155.25

*In MoneyBoat's final response letter an outstanding balance is shown. However, Miss K says she repaid this balance in February 2022. The statement of account provided by MoneyBoat in March 2022 does show a repayment being made but it isn't clear whether this was sufficient to repay the loan. It is likely it was, given no further payments have been recorded. But I've kept this in mind when thinking about what MoneyBoat needs to do in order to put things right for Miss K.

Following Miss K's complaint MoneyBoat wrote to her on 14 September 2021 outlining the checks it had carried out before these loans were approved and it considered these checks to be proportionate. The checks also showed these loans were likely to be affordable for her.

MoneyBoat also offered, in the final response letter to write off, as a gesture of goodwill the outstanding interest due on the final loan. This would've reduced her outstanding balance to £244.75.

Miss K didn't accept the outcome and referred the complaint to the Financial Ombudsman.

An adjudicator initially reviewed the complaint and based on the information he had, he concluded only loans 1 and 2 should be upheld. He said the credit checks results provided by MoneyBoat showed Miss K was already committing to spending her entire income on her existing commitments.

But he also said for loan 3 – 7 MoneyBoat ought to have carried out further checks because the credit search results indicated that Miss K had a number of recent defaulted accounts. At this point he invited Miss K to provide copies of her bank statements in order to see what further checks may have shown MoneyBoat.

MoneyBoat agreed with the adjudicator's assessment.

Miss K didn't agree with the adjudicator's assessment. She said she accepted the outcome in relation to loans 1 and 2. But couldn't agree with the findings reached for loans 3 – 7. Miss K says that she thought by loan 5, given her pattern of lending that loans 6 and 7 should be upheld too. Finally, Miss K says that she should also be paid compensation for the distress this has caused to her.

Later, Miss K provided copies of her bank statements covering the period when loans 3 – 7 were granted.

The adjudicator then reconsidered the complaint in light of the bank statements and thought that in addition to loans 1 and 2, loans 3 – 7 should also be upheld. He said, further checks would've highlighted that Miss K was spending more than her income each month on gambling transactions. Miss K's complaint was now being upheld in full.

Miss K appears to have accepted the most recent assessment.

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

As MoneyBoat hasn't responded to the adjudicator's second assessment, the adjudicator arranged to refer the complaint to an ombudsman for a final decision. As part of that process both Miss K and MoneyBoat were provided with a further chance to provide any further comments and information for consideration. However, no further responses were received from either party.

As no agreement could be reached, the case has been passed to me to resolve.

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 this type of lending - including all the relevant rules, guidance and good industry practice - on our website.

MoneyBoat had to assess the lending to check if Miss K could afford to pay back the amounts she'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. MoneyBoat's checks could've taken into account a number of different things, such as how much was being lent, the size of the repayments, and Miss K'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 Miss K. These factors include:

- Miss K 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);
- Miss K 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);
- Miss K 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 Miss K.

MoneyBoat was required to establish whether Miss K could *sustainably* repay the loan – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Miss K was able to repay her loans sustainably. But it doesn't automatically follow that this is the case.

Industry regulations say that 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 Miss K's complaint.

Loans 1 and 2

To start with both MoneyBoat and Miss K have already accepted the proposed outcome in relation to loans 1 and 2. So I don't think those loans are in dispute and so I make no finding about them. But I have included what MoneyBoat needs to do to pay compensation to Miss K in the 'putting things right section' at the end of the decision.

Instead this decision will focus on loans 3 – 7.

Loan 3

For this loan, Miss K declared she had a monthly income of £2,604. MoneyBoat says this figure was checked with the information it received from the credit reference agencies.

Miss K's declared her expenditure to be around £2,200 per month. Overall, MoneyBoat calculated that Miss K had about £481 each month of disposable income in order to make loan repayments of around £184 per month. Based solely, on the income and expenditure information MoneyBoat could have, reasonably concluded Miss K could afford her loan repayments.

However, MoneyBoat says a credit check was carried out, and a copy of the results have been provided to us. I've reviewed the results and like the adjudicator, I am concerned by the information MoneyBoat was provided. In summary it saw:

- Total debt excluding a mortgage of just over £17,000.
- 17 active credit accounts.
- 6 defaults recorded within the last three years.

While this credit check on its own may not be enough to uphold the complaint, I do think MoneyBoat was put on notice that Miss K may have been having financial difficulties and so it ought to have carried out further checks, such as verification of Miss K's financial position before approving this loan.

So, taking into account the above, I do agree with the adjudicator that given the adverse credit file data MoneyBoat knew about, it ought to have carried out further in-depth checks. MoneyBoat could've done this a number of ways, it could've asked for copies of her payslip

and/or copies of bills in order to gain a complete understanding of Miss K's financial position. Or, it could've asked to review her bank statements.

Miss K has provided the Financial Ombudsman Service with copies of her bank statements and I don't think it's unreasonable to consider these because MoneyBoat in my view didn't do a proportionate check and the bank statements given an accurate picture of Miss K's overall financial position.

Having looked at the bank statements, I'm satisfied that had MoneyBoat undertaken further checks it wouldn't have lent to Miss K. I say this because her bank statements show a significant number of gambling transactions – usually multiple per day and this pattern continues in the entire month before this loan is approved. It's clear to me, that any further lending wasn't just unaffordable for Miss K but also wasn't sustainable for her either.

I'm therefore upholding Miss K's complaint about this loan.

Loans 4 – 7

Similar sorts of checks were carried out for these loans as had been carried out for loan 3. MoneyBoat asked Miss K about her income which she declared to be around £2,600 per month. In addition, her disposable income each month increased to be between £630 to £749 per month. So, again, solely looking at these figures MoneyBoat may have believed her repayments were affordable.

But, I still think MoneyBoat ought to have carried out the same sort of checks as ought to have been carried out for loan 3, for the same reasons. So, I didn't think the checks for these loans went far enough.

I've once again considered Miss K's bank statements and having done so, these loans ought to also not have been granted. I can see a similar pattern for these loans as I can see for loan 3 – that Miss K is spending a significant amount each month on gambling transactions. The frequency of the transactions (as well as the value) ought to have made MoneyBoat realise that these loans weren't affordable for Miss K.

Therefore, MoneyBoat shouldn't have provided loans 3 – 7 and it has already agreed, it should also pay compensation in relation to loans 1 and 2. Therefore, Miss K's complaint is being upheld in full.

Compensation

I've taken on board Miss K's comments, but I don't think any additional compensation is due above and beyond what I will ask MoneyBoat to do to put things right in relation to the lending.

Firstly, I can quite understand why Miss K may have felt she was being accused of fraud given the wording of a particular paragraph in the final response letter. I believe this is a 'standard' paragraph that is included in most final response letters. I know that won't come as comfort or help Miss K but MoneyBoat is correct in as much as Miss K did need to declare accurate information to it before the loan was approved.

However, as I've explained above, it wasn't enough for MoneyBoat to have relied on what Miss K declared, and had it carried out further checks – like I think it ought to have done it wouldn't have approved these loans.

Miss K has provided emails between herself and MoneyBoat on 13 October 2021 where she asked for assistance. She is quite clear in the emails that she was suffering from COVID-19 and is behind with her priority bills.

The agent responding to the emails, is in my view acting reasonably, they are making enquires with Miss K to understand her financial position which is what I'd have expected it to do. I know Miss K is unhappy that it mentioned token payments and she didn't know what amount would be acceptable and I agree that MoneyBoat could've been more specific about the exact amount it considered to be 'token'.

However, Miss K proposed to MoneyBoat a repayment schedule and this was accepted which I think was reasonable. Indeed, all of the communication occurred on the same day, so I can't even conclude that MoneyBoat unreasonably delayed putting a plan in place. Overall, I think at this time, MoneyBoat acted reasonably and fairly.

I can see from the MoneyBoat notes that it has provided, that after the plan was put in place at the end of October, it failed and it added further fees and it's likely during this period that interest was charged as well. However, given I've concluded that the loans ought to not have been advanced then any fees and interest will be refunded to Miss K. So, I'm not going to be asking MoneyBoat to do any more.

I know Miss K may be disappointed by this but given the evidence that I've seen I'm not going to ask MoneyBoat to pay any further compensation above what I've recommended below.

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 Miss K at all, 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 K may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between her and this particular lender which she may not have had with others. 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, she 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 she 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 K 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 K 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 Miss K any of her loans and it should pay compensation for these loans (1 – 7).

If MoneyBoat has sold the outstanding debts it 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 debt back, then it 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 Miss K towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything already refunded.
- B. MoneyBoat should calculate 8% simple interest* on the individual payments made by Miss K which were considered as part of "A", calculated from the date Miss K originally made the payments, to the date the complaint is settled.
- C. It should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Miss K as though they had been repayments of the principal on all outstanding loans. If this results in Miss K having made overpayments then it 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 Miss K. However, if there is still an outstanding balance then MoneyBoat should try to agree an affordable repayment plan with Miss K.
- E. MoneyBoat should remove any adverse information recorded on Miss K's credit file in relation to all of her loans.

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

My final decision

For the reasons I've explained above, I'm upholding Miss K's complaint in full.

Evergreen Finance London Limited trading as MoneyBoat.co.uk should put things right for Miss K as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 31 August 2022.

Robert Walker
Ombudsman