

The complaint

Mr D complains that Evergreen Finance London Limited, trading as MoneyBoat.co.uk, lent to him when he could not afford it.

What happened

Mr D was approved for two loans. Loan 1 was taken on 5 July 2020 and was for £300.00. This was to be repaid by two instalments of £180.35. This loan was repaid early.

Loan 2 was taken on 20 November 2020 and was for £1,500.00. This was to be repaid by four instalments of £575.72. This loan remains outstanding.

After Mr D had complained MoneyBoat wrote to him with its final response letter (FRL) in which it said it did not uphold Mr D's complaint.

Mr D referred his complaint to the Financial Ombudsman Service and one of the adjudicators looked at it. He thought that the repayments for the second loan were a large proportion of Mr D's income and that they were unsustainable.

MoneyBoat knows that we have the complaint as it objected to the jurisdiction element initially. Since that was resolved in May 2022 MoneyBoat has not sent us any additional information and has not responded to our adjudicator's view or the email to inform it that the complaint was being passed to an ombudsman.

Upon receiving our adjudicator's view, Mr D re-iterated his concerns about the loans and raised issues again about the way he was treated by MoneyBoat when he wanted to pay the second loan back.

But that latter part of the complaint is one which will have to be addressed separately as we have received no information from MoneyBoat on those issues. Mr D has asked that we proceed with the irresponsible lending part of his complaint now as – he points out – he commenced this complaint in February 2022 and seeks resolution.

The unresolved complaint on the irresponsible lending part was passed to me to decide.

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 unaffordable/irresponsible lending - including all the relevant rules, guidance and good industry practice - on our website.

Taking into account the relevant rules, guidance and good industry practice, what I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are whether MoneyBoat completed reasonable and proportionate checks to satisfy itself that Mr D would be able to repay in a sustainable way? And, if not, would those checks have shown that Mr D would've been able to do so?

If I determine that MoneyBoat did not act fairly and reasonably in its dealings with Mr D and that he has lost out as a result, I will go on to consider what is fair compensation.

The rules and regulations in place required MoneyBoat to carry out a reasonable and proportionate assessment of Mr D's ability to make the repayments under this agreement. This assessment is sometimes referred to as an "affordability assessment" or "affordability check".

The checks had to be "borrower" focused – so MoneyBoat had to think about whether repaying the loan would be sustainable and/or cause significant adverse consequences for Mr D. In practice this meant that MoneyBoat had to ensure that making the payments to the loan wouldn't cause Mr D undue difficulty or significant adverse consequences.

In other words, it wasn't enough for MoneyBoat to simply think about the likelihood of it getting its money back, it had to consider the impact of the loan repayments on Mr D. Checks also had to be "proportionate" to the specific circumstances of the loan application.

In general, what constitutes a proportionate affordability check will be dependent upon a number of factors including – but not limited to – the circumstances of the consumer (e.g. their financial history, current situation and outlook, and any indications of vulnerability or financial difficulty) and the amount/type/cost of credit they are seeking. Even for the same customer, a proportionate check could look different for different applications.

I think that a reasonable and proportionate check ought generally to have been *more* thorough:

- 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).

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

I have read that Mr D seems unhappy about the Loan 1 outcome – that our adjudicator did not think that MoneyBoat had done anything wrong for loan 1.

Mr D has referred to a series of declined loans but I have no information about those (dates, times and reasons for declines) from either Mr D or MoneyBoat. And overall, as Mr D was a new customer when he applied to MoneyBoat for loan 1, and it was for a relatively modest sum, then I'd not expect it to have done more than it did.

Mr D has raised his gambling issues and I appreciate this must have been a difficult period for him – but as MoneyBoat said in its FRL – if it is unaware of these issues then it cannot react to them. And I would not have expected MoneyBoat to ask to see and review in detail his copy bank statements, for instance, on the application of a first loan for £300.

So, I consider that MoneyBoat carried out proportionate checks and I do not uphold the complaint about loan 1. I further point out that as Mr D repaid it quickly he paid very little interest on that loan.

As the second loan was for five times the amount Mr D had applied for at Loan 1, I can address the complaint about loan 2 briefly. The loan 2 repayments were over three times the repayments for loan 1 and for four months not two months.

On the information MoneyBoat has given us – which is limited – then it has told us it verified Mr D's income and having carried out some checks it increased his 'expenses' figure from £0 to £172. That left MoneyBoat in a position where it had calculated that Mr D's disposable income for loan 2 had been £657. With repayments for this loan 2 scheduled to be almost £576 a month then that left Mr D with £81 for the month for any unexpected costs. As that is less than £100 I consider that to have been too slim a margin.

And I consider that credit repayments of £300 declared by Mr D plus the £576 for loan 2 would have been about £876 a month which, with an income of £2,250 (declared for loan 2), was 38% of his income being spent on credit. In my view that is too high a proportion and I consider it unsustainable.

I have considered that the loan was for a relatively short time. But still that does not alter my view.

On the information I have then I consider that loan 2 ought not to have been lent to Mr D and I uphold his complaint for loan 2.

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 given Mr D loan 2, as I'm satisfied it ought not to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr D 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 D in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr D would more likely than not have taken up any one of these options. So, it wouldn't be fair to now reduce MoneyBoat' liability in this case for what I'm satisfied it has done wrong and should put right.

MoneyBoat shouldn't have given Mr D loan 2.

If MoneyBoat has sold the outstanding debt it should buy it back if it is able to do so and then take the following steps. If MoneyBoat can't buy the debt back then it should liaise with the new debt owner to achieve the results outlined below.

- A. MoneyBoat should remove all interest, fees and charges from the balance on loan 2 and treat any repayments made by Mr D as though they had been repayments of the principal. If this results in Mr D 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.

- B. If there is still an outstanding balance then the amounts calculated should be used to repay any balance remaining. If this results in a surplus then the surplus should be paid to Mr D. However, if there is still an outstanding balance then MoneyBoat should try to agree an affordable repayment plan with Mr D. But I'd remind MoneyBoat of its obligation to treat Mr D fairly and with forbearance – if needed.
- C. MoneyBoat should remove any adverse payment information recorded on Mr D's credit file in relation to loan 2.

*HM Revenue & Customs requires MoneyBoat to deduct tax from this interest. MoneyBoat should give Mr D a certificate showing how much tax it deducted if he asks for one.

My final decision

My final decision is that I uphold Mr D's complaint in part and I direct that Evergreen Finance London Limited, trading as MoneyBoat.co.uk, does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 10 October 2022.

Rachael Williams
Ombudsman