

The complaint

Ms B complains that two loans were lent to her by Evergreen Finance London Limited, trading as MoneyBoat.co.uk, when she could not afford them.

And Ms B complains that before pursuing her through the Courts for the debt on loan 2 MoneyBoat ought to have done more. Ms B says she was pursued aggressively.

Ms B says she did not receive a Letter before Action from MoneyBoat before the court proceedings were issued.

Ms B claims for refunds, amendments to her credit file and money for distress and inconvenience.

What happened

Ms B was approved for two loans with MoneyBoat and here is a brief table of those loans. There was a significant gap between loan 1 and loan 2 such that our adjudicator considered that loan 2 was the start of a new lending relationship.

Loan number	Date Taken	Date Repaid	Instalments	Amount	Highest monthly Repayment
1	19/06/2018	27/07/2018	2	£200.00	£115.63
2	28/08/2019	20/07/2020 following CCJ in June 2020	6	£1,000.00	£308.92

Ms B complained to MoneyBoat in February 2021 using an on-line complaint service and copies of those documents and emails have been sent to us.

Ms B received the final response letter (FRL) from MoneyBoat in February 2021 in which it gave details of the two loans and her applications to it, its own process and that it thought it had done all the right checks before approving the loans.

And on the points appertaining to the County Court Judgment (CCJ) obtained in June 2020, MoneyBoat said:

'I feel it is also worth noting that prior to the judgement and you settling the balance on 20 July 2020 there had still been no contact from yourself or [debt advice charity]. With this in mind I certainly cannot agree that we 'aggressively' pursued court action, the evidence shows that we made every effort to engage with you regarding your missed payments and we allowed more than adequate time for contact from [debt advice charity], however this was never forthcoming.'

Several adjudicators have looked at this complaint. I do not run through all the history here. The third adjudicator looked at the complaint and revised the previous views. Having reviewed the credit information MoneyBoat had before lending, our adjudicator thought that the amount of debt Ms B was already in at the time she applied to MoneyBoat for loans 1 and 2 meant that when considered alongside her other expenses her likely total expenditure exceeded her income. So, she felt that Ms B was not able to afford the loans and that MoneyBoat should put things right for Ms B for both loans.

That third view did not address the CCJ issues.

One of our adjudicators had asked both parties for information about the CCJ in relation to loan 2. It is important that I set out what MoneyBoat has said (I have changed the complainant's name to 'Ms B' for privacy):

'Ms B took out the loan in August 2019 and failed to make any of her scheduled repayments, despite numerous attempts to contact the customer to discuss the missed payments (via telephone, email SMS messaging and a default notice via the post) we received no communication from Ms B until 2 January 2020 (at this stage we had already began preparing the case for legal proceedings).'

Ms B's contact on 2 January 2020 advised that she was going with [debt advice charity], at this time we agreed to hold the account for 30 days to allow them to make contact. We received no further contact from Ms B or [debt advice charity] after the hold period had ended (we even emailed an offer of a small discount on the balance to try and bring the account back inline).

Due to lack of contact or payment we began legal proceedings and submitted a Money ClaimsOnline (MCOL) case for monies owed - judgement by the courts was made in our favor [sic] on 24 June 2020.'

Ms B repaid the judgment debt in full on 20 July 2020.

When we asked Ms B for any copy correspondence and such like that she may have received from MoneyBoat about the court proceedings her responses were:

'Money boat did not send me a letter before action, confirming CCJ action was being taken. That forms part of my complaint- that they made no attempts to support me despite me contacting them to tell them I was in financial difficulty.'

'I don't have any letters. I requested a SAR last year but they ignored my request.'

'When I received the CCJ, I called them to make payment. I don't have any correspondence I'm afraid.'

And more recently Ms B has given us more information which is addressed later in this decision.

I have been sent a copy of the on-line resolution service emails between Ms B and MoneyBoat created when she launched this complaint in February 2021. And I have reviewed that as it has useful copy correspondence between Ms B and the Money Claims Online (MCOL) organisation about that CCJ.

I have details of Ms B's applications for the loans to MoneyBoat, plus its copy credit searches carried out before lending plus the account notes for the period Ms B was a customer. I have copies of the agreements and one copy recorded call between Ms B and MoneyBoat which I think was dated around January 2020 as Ms B refers to receiving advice from the well-known debt advice charity to which MoneyBoat has referred in its correspondence with us. And the 30 day suspension was referred to in that call which I understand was January 2020. I have reviewed them all.

The unresolved complaint was passed to me to decide.

After I had received the complaint, I asked colleagues to obtain further information about the CCJ and I wanted more details about the contact between the parties in the lead up to that CCJ being sought and obtained. I also wanted some details about the court proceedings from MoneyBoat. But nothing was received at that time. We did receive more after I had issued my provisional decision which I refer to later.

The complaint had been with the Financial Ombudsman Service since Ms B had referred it to us on 16 August 2021. This meant it needed resolution and so I decided to issue a provisional decision thereby allowing both parties to respond to what I said in it. That was issued on 10 August 2022 and both parties have responded to give me more information.

The provisional decision is set out here in full for ease of reference and in smaller type to differentiate it from this, my final decision.

My provisional decision dated 22 August 2022

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Preliminary point on the CCJ

Loan 1 was not subject to any court proceedings and was paid off by Ms B long before loan 2 was applied for. The irresponsible lending part of the complaint for loan 1 is one I can proceed with and later in this provisional decision I have given my provisional findings on the merits of loan 1.

For Loan 2 there is a complication due to there being a CCJ in relation to that loan 2 debt. I have come to some provisional findings using the information I have obtained from the parties about it.

Ms B has been careful in what she has said in all her letters and emails relating to this complaint including her complaint form. She has said she has never received a '*Letter Before Action*' from MoneyBoat before it took the matter to court. And she asked it for confirmation whether MoneyBoat had sent her a '*letter before action prior to issuing proceedings*' against her.

And in Ms B's complaint form sent to us she said:

'Despite me contacting Moneyboat to let them know I was in financial difficulty after defaulting, Money boat proceeded to issue proceedings against me and had not sent me a Letter Before Action prior to this. I received a CCJ and so borrowed money to pay this off within a month so as not to affect my credit file further.'

The account notes indicate that she received a series of collections letters to her email address in October 2020 and November 2020 and was moved to 'default' status on 29 November 2020. The account notes also show that MoneyBoat tried to contact her by telephone several times and had no success. It also sent her texts about the arrears.

The recorded telephone call when Ms B called MoneyBoat does seem to have been done on 2 January 2020. I say that because I have listened to that recorded call and what Ms B says about approaching the debt advice charity coincides with the account notes which states that Ms B had gone to the debt advice charity. Her account was placed on hold for 30 days. The MoneyBoat representative warned Ms B that she needs to ensure that the charity contacted it within that 30 day suspension period. Nothing else is recorded in the account notes until April 2020 when the notes say that Ms B was in arrears. And then there's a note to say that Ms B called to pay off the loan in full on 20 July 2020 – after the CCJ was obtained in June 2020.

If I am satisfied that the court hearing was a defended hearing in which the Judge heard arguments from Ms B about irresponsible lending then this complaint cannot go ahead about loan 2. As, following a full court hearing the matter could not be reopened here as a complaint.

If, however, I am satisfied that it was a Judgment entered against Ms B following an uncontested hearing then it seems unlikely that I can conclude the arguments on irresponsible lending were aired in court. In which case I would be able to proceed with the complaint here. I do not have anything concrete, despite asking for it from MoneyBoat, to inform me of the type of hearing and what took place.

So, I have used what evidence and information I have to come to this provisional finding.

As Ms B has said she did not receive confirmation that proceedings were being issued then it's unlikely that Ms B entered a defence to the proceedings. Using the information I have I think it's more likely it was a Judgment in default following an uncontested hearing. So, I do not think that the irresponsible lending arguments were aired in court. So, I consider that I can look at the merits of the complaint for loan 2 alongside loan 1.

If either party can clarify this then that would be helpful.

The allegation that MoneyBoat pursued her aggressively and gave her no support

As I am focussing on the CCJ part of the lending relationship then I think this would be the appropriate time in this provisional decision to give my view on this part of Ms B's complaint.

Overall, having reviewed the correspondence I have, having listened to the recorded call from January 2020, having seen the account notes from MoneyBoat, then I do not accept that either of these parts of Ms B's complaint are made out.

MoneyBoat had tried to contact her – on her email, mobile and through her work – several times before escalating the debt collections actions. It cannot provide support for a customer who does not respond to it. And when Ms B did call MoneyBoat in or around January 2020 then she received support in the form of a 30 day suspension.

And I am persuaded by MoneyBoat's explanation that it did not pursue her aggressively before the court proceedings.

And I do not think that Ms B was ignorant of the court proceedings. I can see from the account notes that Ms B's correct email address and correct address were known to MoneyBoat, even the contact numbers for her employer. So, I think that Ms B was aware of the contact and likely received many of the contact attempts MoneyBoat made.

Careful reading of her complaint is that she did not receive a very particular part of what she considers to have been the lead up to the legal proceedings – that she did not receive a formal 'Letter

Before Action'. But I think it's very likely she received other correspondence – email, telephone or arrears and default notices sent to her address (email or home).

I have noted that Ms B was quick to pay the full amount following the CCJ and within the month. There was an advantage to her credit file and the registering of that CCJ as '*settled*' if she paid it within the month. So, I consider it likely she received that CCJ and reacted quickly having received it through the channels no doubt MoneyBoat had been using prior to the proceedings.

So, I do not plan to award any compensation either for the alleged distress for MoneyBoat's method of obtaining the CCJ or for Ms B's contention that it offered her no support when she was in arrears. I do not think that Ms B's complaint about the way she was 'pursued' and the lack of help are made out. I plan not to uphold these parts of Ms B's complaint.

Irresponsible lending complaints for loans 1 and 2

The current position is contained in our adjudicator's third view which was that she felt both loans ought not to have been approved for Ms B.

I do not agree about loan 1. I have received copies of the credit search results carried out by MoneyBoat in June 2018. The loan Ms B was applying for was a relatively modest one of £200, she was a new customer and it was to be repaid quickly over two months. So, within the context of that application background I think that the checks were proportionate and MoneyBoat approved her for the loan knowing of her debt situation. So I plan not to uphold Ms B's complaint about loan 1.

There was a gap before Ms B applied for the £1,000 loan in August 2019 and it was to be repaid over six months. And I do think it was reasonable for MoneyBoat to have approached Ms B's application as if she was a new customer and so I think it carried out proportionate checks.

However, whether MoneyBoat read the information it had about Ms B properly before deciding to lend is what I have considered. The debt situation Ms B was maintaining in August 2019 was extensive and had increased from Loan 1. MoneyBoat knew this as it's the credit search results document which has led me to conclude that Ms B's indebtedness was too great for MoneyBoat to have responsibly lent to her at that time.

The headline summary from the credit search results obtained just before loan 2 was:

Indebtedness Indicators

Total Balances (All):	£ 31,721
Total Balances (Loans/Instalment Credit):	£ 23,607
Total Balances (Revolving Credit/Budget):	£ 6,959
Total Limits (Revolving Credit/Budget):	£ 8,620
Balance to Limit Ratio (Revolving Credit/Budget):	80 %

SHARE - Financial Data

Number of Accounts:	64
Number of Active Accounts:	23
Number of Settled Accounts:	39
Number of Accounts Opened in Last 6 Months:	5

The search results show Ms B had a great deal of debt and many active accounts and had opened several new accounts just before applying for the MoneyBoat loan.

I can see from that set of search results that Ms B had obtained loans earlier the same month in August 2019 and a £5,000 and a £950 loan in July 2019. She'd taken another £5,288 loan in April 2019. The repayments for all her loans plus her usual expenses leads me to think that it was very unlikely Ms B was going to be able to afford the loan 2 repayments of over £300 a month for the term of the loan.

So, I am planning to uphold Ms B's complaint about loan 2.

If Ms B wants to apply to set the CCJ aside then that is an altogether separate procedure from this complaint process and Ms B must take independent legal advice about that.

So my provisional decision ended by outlining the planned redress and summarising the provisional decision outcome as:

'My provisional decision, on current evidence, is that I can consider loan 2, that I do not plan to uphold the complaint about loan 1, I plan to uphold the complaint about loan 2.

Further, on current evidence, I do not plan to uphold the complaint relating to the pre-action correspondence, Ms B's allegation of being pursued 'aggressively' before the CCJ and that Ms B says she received no support from MoneyBoat.

I will review the complaint in two weeks on 24 August 2022.'

Both parties responded and so now I have reviewed all the evidence again and the new information and I have come to my 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.

After my provisional decision was issued I gave time to both parties to respond.

MoneyBoat replied and sent us several documents..

One response from MoneyBoat was that it had nothing to add and so I take that to mean it had no further evidence to add in relation to the merits of the case.

In relation to the CCJ, MoneyBoat did have some copy documents. A copy of Ms B's acknowledgment of the service of court proceedings (dated 4 May 2020) in which Ms B had indicated to the court she did intend to defend part of MoneyBoat's claim. The court covering letter said that Ms B had 28 days in which to file her response. And MoneyBoat sent to us a copy of the Judgment date 24 June 2020.

These were sent to Ms B for her to comment on.

Ms B responded to my provisional decision to say that:

- She had not received a letter before claim from MoneyBoat
- She had amassed £40,000 of debt across 23 creditors and it had become overwhelming
- She did not recall MoneyBoat making attempts to contact her by phone, email or post – it went straight to 'court action'.
- She did not defend the case and it was a default judgment
- She wants the 'agreement ...cleared from my credit file ... and the interest being paid back to me'.

Ms B further responded after receiving the copy court documents from us and said:

- She was startled and overwhelmed when she received the court documents in 2020
- She did respond to defend the claim in 2020 but then ran out of time to put in a court response
- She knew it was right to pay to MoneyBoat the capital amount of £1,000 but did not feel it was right to pay the interest
- She was upset at the timing of the court action – April/May 2020 – just as the Covid 19 lockdown commenced in March 2020

Ms B also describes how very distressed she was by her debt situation at that time (2020) and was being pursued by 23 creditors.

All these documents and submissions I have reconsidered with the original complaint material.

I am sorry to hear of Ms B's distress and it sounded challenging to have to deal with so much debt.

The information from both parties has helped me to clarify some points and so I summarise them here without setting out all the details again as the provisional decision (duplicated above) was deliberately detailed.

What I have decided

Now, I am satisfied that the court proceedings did end in a Judgment in Default in 2020 and no contested court hearing took place. So, I can state with more confidence than before that I am able to review the complaint about loan 2.

I have looked again at what Ms B has said about the lead up to receiving the court documents and MoneyBoat's explanations as to how it tried to obtain the payments for the debt. I have looked again at the account notes and the recorded call from 30 January 2020. Still I am of the view that MoneyBoat had tried to contact her – on her email, mobile and through her work – several times before escalating the debt collections actions. It cannot provide support for a customer who does not respond to it. And when Ms B did call MoneyBoat in January 2020 then she received support in the form of a 30 day suspension.

And I am persuaded by MoneyBoat's explanation that it did not pursue her aggressively before the court proceedings. Ms B had been in debt to it well before the Covid 19 lockdown commenced and so I think that the timing was coincidental.

My assumption that Ms B was aware of the court proceedings has been confirmed and so I see no reason to think that any earlier emails or letters addressed to her about the debt or any warning of court proceedings would not have reached her. Ms B took the loan in August 2019 and when she did respond to the MoneyBoat debt notices and telephone call in January 2020, she was given a 30 day suspension. And she had informed MoneyBoat she was obtaining advice from the well-known debt advice charity.

I can understand that if Ms B had so many creditors chasing her at once then that must have been very difficult, but I cannot attribute MoneyBoat's actions to that. I consider from the evidence I have gathered over the life of this complaint (and it has taken several attempts to

get as much as I have now got from both parties) then it went about it in an ordinary way.

I repeat all my provisional findings about this part of Ms B's complaint. I do not award any compensation either for the alleged distress for MoneyBoat's method of obtaining the CCJ or for Ms B's contention that it offered her no support when she was in arrears.

On the irresponsible lending parts – I do not uphold Ms B's complaint about loan 1 and I do uphold her complaint about loan 2. MoneyBoat has no more to add on this part and so without more I have no reason to depart from the findings I made in my provisional decision.

On the redress, Ms B has said that she wants the loan to be removed from her credit file. After a successful irresponsible lending complaint, I would not usually ask for the loan to be deleted from her credit file and I see no reason to depart from our approach here. The redress will remain as it was set out in my provisional decision.

Putting things right

I direct that MoneyBoat does as follows:

- refund all interest and charges Ms B paid on loan 2;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement*;
- remove any negative payment information about loan 2 from Ms B's credit file;

*HM Revenue & Customs requires MoneyBoat to take off tax from this interest. It must give Ms B a certificate showing how much tax it's taken off if she asks for one.

My final decision

My final decision is that I uphold Ms B's complaint in part and I direct that Evergreen Finance London Limited, trading as MoneyBoat.co.uk, does as I have outlined above in the 'putting things right' section of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 29 September 2022.

Rachael Williams
Ombudsman