

## **Complaint**

Mr M has complained that Evergreen Finance London Limited (trading as “Money Boat”.co.uk) irresponsibly lent to him.

## **Background**

Money Boat provided Mr M with a loan for £300 in October 2020. The loan was due to be repaid in three monthly instalments of £135.29. As I understand it, none of these payments were made and the loan was passed to Money Boat’s collections team.

Mr M subsequently complained to Money Boat. Mr M’s complaint was considered by two of our adjudicators. The second of which thought that Money Barn shouldn’t have provided this loan to Mr M and recommended that the complaint be upheld.

Money Boat disagreed with this assessment and so the case was passed to an ombudsman.

## **My findings**

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

We’ve explained how we handle complaints about unaffordable and irresponsible lending on our website. And I’ve used this approach to help me decide Mr M’s complaint. Having carefully considered everything I’ve decided to uphold Mr M’s complaint. I’ll explain why in a little more detail.

Money Boat needed to make sure it didn’t lend irresponsibly. In practice, what this means is Money Boat needed to carry out proportionate checks to be able to understand whether Mr M could afford to repay any credit it provided.

Our website sets out what we typically think about when deciding whether a lender’s checks were proportionate. Generally, we think it’s reasonable for a lender’s checks to be less thorough – in terms of how much information it gathers and what it does to verify it – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower’s income was low or the amount lent was high. And the longer the lending relationship goes on, the greater the risk of it becoming unsustainable and the borrower experiencing financial difficulty. So we’d expect a lender to be able to show that it didn’t continue to lend to a customer irresponsibly.

Money Boat says that Mr M passed its affordability checks which were based on his income, information about his existing credit commitments obtained from a credit reference agency and an estimation of his essential spending.

I’ve thought about what Money Boat has said – in particular that Mr M declared that he had a monthly income which was well above average and that it was entitled to rely on the information it was provided with. Equally, as this was a loan for a relatively low amount over

a short term, I accept that there is an argument for saying that a lighter touch affordability assessment might have been proportionate here.

However, it's important to note that the relevant rules in CONC are in place to protect consumers. And the fact that regulated lenders are required to exercise reasonable care and skill, have clear and effective processes in place to assess affordability and also take adequate steps to check and verify the information provided by a customer all point to there being an expectation that a firm shouldn't simply rely on what it is told by a prospective borrower, about matters regarding income and expenditure.

In particular, I'm mindful that CONC 5.2A7 (1)R requires a lender to base its affordability assessment on sufficient information, including what it is aware at the time its assessment is carried out. In this case, Money Boat would, or at the very least ought to, have been aware that it had declined a number of loan applications from Mr M. I count at least 50 prior to this application and nearly 30 in the month leading up to this successful application too. Furthermore, it was obvious that Mr M was inputting different loan amounts, salary amounts and even employers, in an attempt to see an application approved.

And I think that the sheer number of declined applications was something that Money Boat ought to have kept in mind when assessing Mr M's successful application. I've seen what Money Boat has said about relying on credit reference agency information to cross reference Mr M's income declaration. But Money Boat would have seen how the information across the previous applications fluctuated wildly. Furthermore, it was clear that Mr M was in a significant amount of debt. So any attempt to cross-reference Mr M's declared income against the funds going into his account had a much higher margin for error given Mr M's account was likely to have been in receipt of significant amounts of borrowed credit.

I'm also concerned that Money Boat appears to have proceeded with Mr M's application on the basis that he had a monthly disposable income of £2,200.00. I have to question how and why Money Boat could reasonably have reached such an outcome given Mr M was borrowing £300 on such disadvantageous terms. I can't see any reasonable basis for Mr M taking this loan out if he had anywhere near £2,200.00 available in disposable income in the first place.

Bearing in mind all of this, I think that Money Boat needed to take steps to address the clear inconsistencies in the information and evidence it had. It is arguable that this in itself was enough to decline Mr M's application. But even if it wasn't, at the very least, Money Boat needed to get answers to the significant number of questions thrown up in the information it had. And it needed to do this by taking further steps to verify Mr M's actual monthly income and expenditure.

As I can't see that this Money Boat did do this and instead chose to rely on what looked to have been an overoptimistic assessment of Mr M's disposable income, I don't think that the checks it carried out before providing Mr M with his loan were reasonable and proportionate.

I think that if Money Boat had looked further into Mr M's circumstances, in the way it ought to have done, it would have seen that he was earning substantially less than what it believed. His income appears to have predominantly made of sickness benefits. To be clear, I'm not suggesting that Mr M shouldn't have been lent to just because he was in receipt of benefits. However, when Mr M's actual expenditure is deducted from his actual income, it is apparent that he was struggling to manage his existing debts.

All of this leaves me persuaded by what Mr M has said about already being in a difficult financial position at the time. As this is the case, I do think that Mr M's existing financial position meant that he was unlikely to be able to afford the repayments to this loan, without

undue difficulty or borrowing further. And I'm satisfied that reasonable and proportionate checks would more like than not have shown Money Boat that it shouldn't have provided this loan to Mr M. As Money Boat provided Mr M with this loan, notwithstanding this, I'm satisfied it failed to act fairly and reasonably towards him.

### **Fair compensation – what Money Boat needs to do to put things right for Mr M**

I've given careful thought to what Money Boat needs to do to put things right for Mr M in this case.

It might help for me to start by explaining that where a business accepts (or we decide) it did something wrong, we'd expect the business to put the consumer in the position they would be in if that wrong hadn't taken place. And in an ideal world, we'd tell a business to put a consumer in the position they'd now be in if they hadn't been given the credit they shouldn't have. However, that's not possible in cases where funds that shouldn't have been advanced were advanced because typically those funds will have already been spent.

So we have to look at a way of asking a business to put things right in a fair and reasonable way. And where a business continued to allow a consumer to use a credit facility which it should have realised was unsustainable, we'd typically expect it to put the consumer in the position they'd be in now if they hadn't paid any further interest and charges on that credit.

This means we'd normally expect a lender to refund the interest and charges added to any loan it ought to have realised was unaffordable. And if those interest and charges were paid also add 8% simple interest per year.

Money Boat has said that Mr M hasn't made any payments. So even if we were to uphold this complaint there is no interest to refund and we should merely directing it to recover a maximum of £300 – the amount in lent in the first place – from Mr M. I've carefully thought about what Money Boat has said.

I accept that what Money Boat has suggested I should do is what I'd typically tell a firm to do when upholding a complaint about irresponsible or unaffordable lending. However, we do look at each case individually and on its own particular merits. And while we have a general approach to how we might tell a lender to put things right where provided credit it shouldn't have (such as here), we can and will tell it to do something different and/or something more if there's a strong reason to say that's what would be fair and reasonable to do in the circumstances of that individual case.

And having given careful thought to the circumstances here, I do think that there is a strong reason for me to direct Money Boat to do something different here. I'll explain why in a little more detail.

I've already explained why there were already number of clear warning signs that something was clearly awry when Money Boat was gathering information prior to lending to Mr M, which Money Boat ignored. And I can't ignore the fact that by providing Mr M with a loan, in these circumstances, Money Boat ran the risk that Mr M was incurring a debt he wouldn't be able to repay and which could cause significant hardship.

Furthermore, the evidence I've been provided with does show that Mr M has a medical condition and that this has resulted in him being out of work for sometime. I appreciate that Money Boat may not have seen all of this information. Nonetheless, the medical information I've seen indicates that Mr M's health is unlikely to improve in the short to medium term.

So, on the face of things, Mr M has been left with a debt that he won't be able to repay without experiencing significant hardship and the prospects of things changing in the near future thus enabling Mr M being able to repay this loan aren't particularly high. And it is clear that Money Boat pursuing the outstanding balance on this loan is causing Mr M additional distress at a time when he's already unwell.

Given all of this and the particular circumstances of this case, I think that the fair and reasonable thing for Money Boat to do here would be to write off the entire outstanding balance remaining on the loan. So I'm directing Money Boat to write off the entire outstanding balance, including the amount lent, on Mr M's loan.

I turn now to Mr M's credit file. We'd typically expect a lender to remove any adverse information about a loan, from the borrower's credit file, where a complaint is upheld for irresponsible lending. However, this is when a consumer has paid, or is expected to repay, the capital amount they were lent. And given what I'm asking Money Boat to do in terms of Mr M's loan, I don't think that telling it to remove any adverse information from Mr M's credit file would be the fair and reasonable thing to do here.

To explain, the basis for Mr M's complaint was and is that he's a vulnerable consumer and that his difficulties were made worse by Money Boat's decision to provide this loan to him in October 2020 and then pursue the debt in the way that it did. I've accepted this is the case, and this has played a large part in my decision to direct Money Boat to write off the outstanding balance on his loan.

I think that it would be unfair and unreasonable in its logic for me to reach this finding in relation to the balance owed, but then depart from it in terms of Mr M's credit file going forward. Indeed, I'm mindful that Mr M was able to obtain a loan from Money Boat despite the sheer number of declined applications, which suggested an inability to manage his finances, which other lenders simply wouldn't know about. And from what I can see, Mr M has made a number of further applications, even after he proved unable to repay this particular loan and complained about having been provided with it.

In these circumstances, it seems to me that removing the loan, or adverse information from Mr M's credit file, which would in effect record that he repaid it in full and on time when this didn't happen, would increase the chances of him being able to borrow further. In my view, this would be counterproductive and arguably not in his best interests, or those of any potential future lender. So I think it's fair and reasonable for Money Boat to reflect what I'm telling it to do in relation to the outstanding balance and record it wrote off a balance on this loan on Mr M's credit file.

All of this means that I think it would be fair and reasonable in all the circumstances of Mr M's complaint for Money Boat to do the following to put things right:

- write off the outstanding balance on Mr M's loan; and
- Money Boat can and should record that it wrote off an outstanding balance on Mr M's loan on his credit file.

**My final decision**

For the reasons explained, I'm upholding Mr M's complaint. Evergreen Finance London Limited should put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 30 December 2022.

Jeshen Narayanan  
**Ombudsman**