

The complaint

Miss W complains that Evergreen Finance London Limited trading as MoneyBoat.co.uk (MoneyBoat) provided her loans during a time that she was having financial difficulties and having to take out other payday loans to settle existing loans. Miss W says she couldn't afford the repayments she was committed to making.

What happened

Miss W was advanced two loans between March and May 2022. A summary of her borrowing can be found below.

loan number	loan amount	agreement date	repayment date	instalments	instalment amount
1	£200.00	12/03/2022	20/05/2022	3	£84.88
2	£400.00	20/05/2022	outstanding	4	£158.70

Following Miss W's complaint, MoneyBoat wrote to her to explain it had carried out affordability checks which showed Miss W could afford the repayments she was committed to making. Unhappy, with this outcome, Miss W referred the complaint to the Financial Ombudsman.

An adjudicator reviewed the complaint and he thought MoneyBoat had carried out a proportionate check before granting these loans because the checks showed it that Miss W could afford the payments. He also didn't think it had yet reached the point where MoneyBoat needed to verify the information Miss W had provided or it had reached the point where the loans were unsustainable for her. Overall, he didn't uphold the complaint.

MoneyBoat didn't acknowledge or provide any further comments about the proposed outcome.

Miss W didn't agree with the adjudicator's assessment, and she sent several emails with her reasons. But I've summarised all her responses below.

- Miss W had multiple loans outstanding at the time these loans were approved.
- Loan 2 was taken on the same day loan 1 was repaid.
- MoneyBoat refused to set up a repayment plan for her.
- An updated copy of her credit file was provided.
- Miss W has a number of other creditors who needed repaying.

The adjudicator went back to Miss W to clarify his assessment. He explained the credit check results did show some historic defaults the repayments of these appeared to be up to date. He also said that the income and expenditure checks showed the loans to be affordable for her.

Miss W, in response confirmed that in May 2022, she had the following active accounts:

- 4 credit cards,
- 3 catalogue shopping accounts,
- 4 outstanding debts and
- 7 payday loans.

As no agreement has been reached, the case was passed to an ombudsman to issue a decision. I then proceeded to issue a provisional decision explaining the reasons why I was intending to uphold Miss W's complaint – in part. A copy of the provisional findings follows this in smaller font and forms part of this final decision.

What I said in my provisional decision

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 W 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 W'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 W. These factors include:

- Miss W 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 W 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 W 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 W.

MoneyBoat was required to establish whether Miss W could sustainably repay the loans – 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 W 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 W's complaint.

Loan 1

For this loan, MoneyBoat asked Miss W to declare her monthly income and expenditure. Miss W declared her income was £2,835 and she declared expenditure of £636. In addition,

based on a credit search (which I go into more detail below) MoneyBoat thought it was reasonable to increase Miss W's monthly expenditure by a further £214. Overall, MoneyBoat calculated a monthly disposable income of £1,985.

Based solely on the information Miss W declared to MoneyBoat, it was reasonable for MoneyBoat to have concluded Miss W would be able to afford her monthly repayment of around £85.

MoneyBoat has also said for this loan, it carried out a credit search and it has provided the Financial Ombudsman Service with the results it received. It is worth saying here that although MoneyBoat carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard.

Therefore, it's entirely possible that the information MoneyBoat received may not have entirely reflected the information Miss W may be able to view in the credit reports she's obtained and sent to us. There could be for several reasons for this, such as MoneyBoat only asking for certain pieces of information. But what MoneyBoat can't do is carry out a credit search and then not react to the information it received – if necessary.

This means it isn't reasonable, at this point, to consider the credit reports Miss W has provided. I say this because, MoneyBoat carried out its own credit search and received the results. In that situation I think it's entirely reasonable to see what MoneyBoat was told and whether the information it received ought to have prompted it to either decline the application or to have made further enquires with Miss W. So, while I thank Miss W for sending in her full credit file I'm only considering in this case, the results of the credit search which we know MoneyBoat carried out.

When loan 1 was approved, MoneyBoat was aware that Miss W had £5,817 of outstanding debt spread across 14 active credit accounts. The number of active accounts could be quite high – in certain situations. However, MoneyBoat knew that only one new account had been opened within the last six months. So, this wouldn't suggest Miss W was reliant on or a regular user of high-cost loans.

In addition, MoneyBoat was aware historically, Miss W had defaulted on three accounts. But these defaults had been applied more than 12 months before the loan but less than three years. Although, this again, isn't an insignificant number, I do think, given the historic nature of these defaults that MoneyBoat wouldn't have been concerned about Miss W's ability to repay this loan.

I've seen a number of the active accounts were credit cards and mail order accounts, and the total monthly repayments (based on what Miss W had previously paid) was around £269. This was considerably more than the £100 she declared to MoneyBoat. But as I explained above, MoneyBoat did increase Miss W's expenditure by a further £214. So, I do think MoneyBoat had a fairly good idea of Miss W's total credit commitments.

Overall, while there are some negative indicators in Miss W's credit check such as the defaults but there doesn't seem to me, enough to indicate that Miss W was reliant on other forms of credit and / or payday loans. Of course, the number of active accounts MoneyBoat was told about may not be correct, but it was entitled to rely on the information it was given.

Given it was still quite early on in the lending relationship and there was 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 Miss W had provided. In addition, there wasn't anything, as far as I can see which would've suggested wasn't anything to suggest that these loans were unsustainable for her.

For this loan, I consider MoneyBoat carried out a proportionate check which showed it that Miss W would be in a position to afford the repayments she was committed to making. I therefore do not uphold her complaint about this loan.

Loan 2

Miss W appears to have repaid loan 1 and, on the day, she repaid it, she returned to MoneyBoat for a loan of twice the size to be repaid over a longer period. The result of this, is that her monthly commitment to MoneyBoat had almost doubled.

MoneyBoat carried out the same sort of checks for this loan as it had done so for loan 1, it carried out an income and expenditure check as well as carrying out a credit search.

For this loan, Miss W declared her income was £1,919 – this is a drop of nearly £1,000 compared to when Miss W took out loan one. Her monthly outgoings have been recorded as £1,250. Leaving, £619 a month in disposable income to be able to afford her repayment of nearly £159 per month. For this loan, MoneyBoat didn't increase Miss W's declared expenditure, as it did for loan 1. Based solely on what Miss W declared the loan appeared affordable.

However, I would add, that Miss W declared at loan 2, that her rent / mortgage was now £250 per month more than at loan 1. And for this loan, unlike loan 1 costs have been declared for items such as food and transport.

In addition, for this loan Miss W increased her declared credit commitments from £101 to £300 per month. Which would've suggested to MoneyBoat that her credit commitments, were roughly the same – given for the first loan MoneyBoat had added an extra amount to her credit commitments to cover what it saw in the credit report.

MoneyBoat also carried out a credit search before loan 2 was advanced, and again, it has provided a copy of the results. I've therefore considered the results to see whether MoneyBoat was on notice that Miss W's financial position had deteriorated.

The headline summary showed, Miss W's debt had increased slightly, so she now owed £6,437 across 16 accounts. So, since her last loan, MoneyBoat was on notice that two further credit accounts had been opened, one of which would've likely been the previous MoneyBoat loan. So, it ought to have been aware that Miss W was able to open at least one new account elsewhere. MoneyBoat was also aware that Miss W was using 94% of her available credit – which a similar percentage when compared to her situation at loan 1. MoneyBoat also knew, that there hadn't been further defaulted accounts.

While Miss W had opened three accounts within the last six months (which included loan 1) MoneyBoat was aware there had been 4 credit searches in the last three months. That is a sign, to me, that Miss W was actively trying to seek credit and wasn't always being approved for the credit she was requesting.

MoneyBoat was provided some details of open credit accounts and those payments Miss W was making. It seems she had two open utility accounts where she was paying £76 a month towards them both. On top of this, there were two telecommunication contracts with payments of £66 per month in total.

The payments to the active mail order accounts came to £137 per month and credit card payments came to at least £70 per month.

On top of that, there were two new high-cost credit accounts which had been updated (and likely added to her credit record) in April 2022. One of those had a monthly instalment repayment of £96 and another one hadn't yet been paid but had a balance of £425. It isn't clear whether this was an instalment loan or whether that was the full amount Miss W was due to pay.

So already, MoneyBoat was on notice that potentially £870 was being used up out of her income - of £1,900 was going towards credit commitments before any other living costs were factored in.

In addition, it seems from the decreasing balances, that two of Miss W's defaulted accounts were being collected through a third-party agency, and the repayments to those companies were, in total, about £200 per month. In total, even before Miss W paid MoneyBoat for loan 2 she was likely committed to spending £1,070 each month.

Now, there is an argument that this is too high portion of her income when there were still other living costs to factor in as well such as rent and food that needed to be considered. And I could be wrong in relation to one of the debts, in as much as the outstanding loan balance of £425 wasn't due to be paid in one lump sum – but over a number of instalments. But even, if I'm wrong about this loan, that wouldn't change the outcome that I'm intending to reach.

What the credit checks do show, is that Miss W was now making payments to debt collectors for historic debts, had opened at least two further high-cost loans since loan 1 was granted and her income had significant decreased since the first loan, just two months prior. All in all, I do think MoneyBoat's checks didn't go far enough.

Instead, I think it needed to gain a full understanding of Miss W's actual financial position to ensure the loan was affordable. This could've been done in several ways, such as asking for evidence of her outgoings (such as copies of bills) or looking at bank statements and/or Miss W's full credit file.

I accept there is no regulatory requirement for MoneyBoat to have viewed the bank statements but in this case, I think it was proportionate to do so. Miss W has sent us copy banks statements for the period shortly before this loan was approved. So, I consider it entirely reasonable to consider these.

In May 2022, I can see that Miss W's declared income does appear to be accurate, so she did receive a salary of around £1,900 per month. In this month, payments solely to her direct debits to cover insurances, other credit facilities, union fees and utilities as well as her rent comes to around £1,622.

This left Miss W with only around £279 per month in order to cover her food, transport and any other costs, as well as her loan repayment to MoneyBoat. On top of this, in the weeks leading up to the loan (and what wasn't shown in the credit check MoneyBoat carried out) were two more loans to high-cost credit providers totalling £500 – loans that needed to be repaid and serviced.

In addition, there were two other loans, that were visible on the credit report and which I mention earlier on in the decision – which totalled another £650. So, all in all, Miss W had borrowed £1,100 of capital from four different lenders. The fact, that Miss W had four such loans outstanding, is in my mind further evidence that she was having financial difficulties.

Other documentation has also been provided by Miss W, in the form of returned direct debit notification letters. These show that in March 2022 she had five direct debits returned as unpaid, one in April and in May 2022 she had a further for. Importantly, some of these returned payments were for priority bills, such as utilities and her television licence. The fact, Miss W had so many returned payments is in my mind further evidence that she was having financial difficulties and struggling to maintain her existing credit commitments and therefore evidence this second and final loan wasn't affordable for her.

Therefore, based on what I can see, I think it's highly likely Miss W wasn't in a position to take on this loan because it was unaffordable and indeed, there are signs that she was having other difficulties. I'm planning to uphold Miss W's complaint about her second loan.

Other considerations

Miss W has in short said that she doesn't feel that she has been treated fairly by MoneyBoat while trying to set up a payment plan.

Miss W has sent the Financial Ombudsman copies of I believe all the emails she has sent MoneyBoat to date, has also provided copies of its contact notes, which I have looked through.

As part of my investigation into the complaint, further enquires have been made with MoneyBoat about the help and support it has offered as well as details of the payment plan Miss W attempted to set up, when she offered £5 per month – and was told that this was too low and therefore MoneyBoat wouldn't accept it.

MoneyBoat says, that the original complaint Miss W made was solely about the unaffordable lending. I take from this, that as the original complaint was only about whether it was right or wrong for the loans to be granted it considered further enquiries about how it may (or may not) have helped Miss W to be out of scope for this complaint.

I don't entirely agree with that, but as the complaint is now partly upheld, there will now need to be calculations carried out to reduce Miss W's outstanding debt and this will provide an opportunity to move forward with a payment plan (if needed).

But for completeness, I've outlined what MoneyBoat told the Financial Ombudsman Service in response to the information requests.

MoneyBoat has currently confirmed that no formal payment plan has been put in place and Miss W is currently in a "*breathing space*".

MoneyBoat says, that Miss W made offers to pay £50 and then £30 per month. However, when payment was due only £5 was made. MoneyBoat says, that this amount was too small to accept given the infancy of the loan. It says it asked for further documentation to support the level of payment Miss W wanted to make. MoneyBoat says, it won't consider accepting such an offer, on a short-term loan without supporting documentation – given to date it hasn't received anything from Miss W.

MoneyBoat, to date has confirmed "*... currently the interest is capped at the contractual amount meaning that Miss W [name removed] has not been charged any additional interest.*"

Finally, MoneyBoat says, that Miss W has continued to apply for further loans from it – which have been declined.

However, it's worth saying here, that as I'm planning to uphold Miss W's final loan, this means no interest, fees or charges ought to be added to the balance. This means Miss W should only repay MoneyBoat the amount of capital she borrowed.

Therefore, the total Miss W ought to repay MoneyBoat is £400. Based on the statement of account, Miss W appears to have paid £168.70 towards this loan so at most she has another £231.70 left to pay.

Miss W has told the Financial Ombudsman Service of recent health problems and has said that due to other loans and the cost of living she can't afford to repay what she owes MoneyBoat (along with other creditors). These are issues that MoneyBoat will need to take into account while working with Miss W to pay down what is owed. But I leave it to Miss W and MoneyBoat to discuss a fair way forward once the complaint is settled.

It is of course possible, that Miss W doesn't consider – moving forward that she's been treated fairly. If so, then she may wish to raise these concerns directly with MoneyBoat who will then be able to investigate the matter.

Response to the provisional decision

Both Miss W and MoneyBoat were asked to provide anything further for consideration in response to the provisional decision as soon as possible, but in any event, no later than 14 December 2022.

No response has been received from MoneyBoat.

Miss W emailed the Financial Ombudsman Service confirming she accepted the findings of the provisional 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.

Miss W accepted the findings in the provisional decision and MoneyBoat hasn't responded. Therefore, as no new information or comments have been provided, I see no reason to depart from the findings I reached in the provisional decision.

I still think MoneyBoat was wrong to have granted loan two, for the reasons outlined in the provisional decision (above), and I've outlined below what MoneyBoat needs to do in order to put things right for Miss W.

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 loan two to Miss W, 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 W may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. 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 Miss W 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 W 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 W loan two.

If MoneyBoat has sold the outstanding debt it, should buy it back if is able to do so and then take the following steps. If MoneyBoat isn't able to 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 Miss W as though they had been repayments of

the principal. If this results in Miss W 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.

- B. However, if there is still an outstanding balance then MoneyBoat should try to agree an affordable repayment plan with Miss W. I'd remind it of its obligation to treat Miss W fairly and with forbearance.
- C. MoneyBoat should remove any adverse information recorded on Miss W's credit file in relation to loans 2.

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

My final decision

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

Evergreen Finance London Limited trading as MoneyBoat.co.uk should put things right as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss W to accept or reject my decision before 12 January 2023.

Robert Walker
Ombudsman