

## The complaint

Mr H complains that Evergreen Finance London Limited trading as MoneyBoat.co.uk (MoneyBoat) didn't carry out proportionate and relevant affordability checks before it lent to him.

## What happened

Mr H was advanced two instalment loans by MoneyBoat, and a summary of his borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of instalments	instalment amount
1	£400.00	08/12/2020	18/12/2020	3	£176.69
2	£700.00	29/12/2020	outstanding	4	£273.23

Mr H has had some problems repaying his final loan and based on the statement of account provided by MoneyBoat an outstanding balance remains due.

Following Mr H's complaint MoneyBoat wrote to him explaining why it wasn't going to uphold his complaint. Mr H didn't agree, and he referred the complaint to the Financial Ombudsman.

The complaint was reviewed by an adjudicator, and he upheld the complaint in full. He explained why the credit search results showed that Mr H already had significant arrears on his mortgage, a hire purchase (HP) agreement as well as his utilities. In the adjudicator's view this meant Mr H would be unlikely to repay the loans sustainably.

MoneyBoat didn't respond to or acknowledge the adjudicator's assessment.

As no agreement has been received the case has been passed to me for a 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.

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 Mr H could afford to pay back the amounts he'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 Mr H'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 Mr H. These factors include:

- Mr H 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);
- Mr H 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);
- Mr H 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 Mr H. The adjudicator didn't think this applied to Mr H complaint.

MoneyBoat was required to establish whether Mr H could *sustainably* repay the loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr H was able to repay his 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 Mr H's complaint.

## Loan 1

For this loan, Mr H declared he had a monthly income of £2,350. MoneyBoat says this figure was checked with a credit reference agency for its accuracy. Mr H also declared his expenditure to be around £485 per month. However, as part of the affordability check MoneyBoat said it did the following.

*On your loan applications we increased the monthly expenditure that you input, on the basis that your credit report highlighted different expenditure than you had disclosed, and/or to bring you in line with the average expenditure listed on the Common Financial Statement.*

As a result of these additional checks, MoneyBoat increased Mr H's monthly expenditure by £365. Giving him a total monthly outgoings of £850. This left £1,500 per month of disposable income to meet the repayments Mr H was committed to making. Based solely on the income and expenditure information the loan looked affordable.

MoneyBoat says a credit check was carried out before this loan was granted, and a copy of the results have been provided to the Financial Ombudsman. I've reviewed the results and like the adjudicator I'm concerned by the information that MoneyBoat was provided in it.

MoneyBoat was on notice because the credit checks showed it, that Mr H was in severe mortgage arrears, had been in significant arrears with a HP agreement since January 2020 and had recently started to fall behind with his payments towards his gas and electricity.

MoneyBoat was therefore on notice from its own credit check results, that Mr H was struggling to repay and manage his outstanding credit commitments – and one of these was a priority debt in the form of his mortgage. Knowing this, I don't think MoneyBoat ought to have approved this loan because Mr H had demonstrated that he wasn't able to keep on top of his current debts and was likely experiencing some form of financial difficulties.

MoneyBoat shouldn't have approved this loan and I am upholding Mr H's complaint about it.

## **Loan 2**

As far as I can see the checks for this loan were identical to the checks that were carried out before loan 1. So, MoneyBoat asked Mr H for details of his income and expenditure.

For this loan, Mr H declared his income was still about the same at £2,360 and had declared outgoings of £550. However, as before, following further checks by MoneyBoat it increased his monthly expenditure by a further £304. Leaving him with £1,246 a month disposable income, which was enough to make his commitments of around £273 per month.

I've also reviewed the credit check results provided by MoneyBoat and these are broadly similar to loan 1. Mr H was still in arrears with his mortgage, HP and his two utilities. The results being similar isn't surprising given this loan was taken out in the same month as loan 1.

But in saying that, Mr H's financial position – from the credit search results showed no change in Mr H's financial position. He was still significantly in arrears with a number of credit facilities and knowing this I don't think MoneyBoat could have reasonably concluded that Mr H could repay this loan in a sustainable manner.

Like loan 1, I am also upholding Mr H's complaint about this loan.

## **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 Mr H at all, 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 H may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, he may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, he 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 he had done that, the information that would have been available to such a lender and how he 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 H 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 Mr H 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 Mr H loans 1 and 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 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 add together the total of the repayments made by Mr H towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything MoneyBoat as already refunded.
- B. MoneyBoat should calculate 8% simple interest\* on the individual payments made by Mr H which were considered as part of "A", calculated from the date Mr H originally made the payments, to the date the complaint is settled.
- C. MoneyBoat should remove all interest, fees and charges from the balance on the upheld outstanding loan, and treat any repayments made by Mr H as though they had been repayments of the principal on the outstanding loan. If this results in Mr H 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 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 the outstanding loan. If this results in a surplus, then the surplus should be paid to Mr H. However, if there is still an outstanding balance then MoneyBoat should try to agree an affordable repayment plan with Mr H.
- E. MoneyBoat should remove any adverse information recorded on Mr H's credit file in relation to loans 1 and 2.

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

Mr H had told us and has provided evidence of his financial difficulties at the moment especially with regards to his mortgage. It's also likely, given what I've seen that after the redress is carried out above, he will still have an outstanding balance to pay. So, I want to remind MoneyBoat that it will need to consider these financial difficulties when discussing a way forward and treat Mr H fairly and with forbearance – as the regulations say it should do.

### **My final decision**

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

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 18 April 2023.

Robert Walker  
**Ombudsman**