

The complaint

Ms T complains Evergreen Finance Limited London trading as MoneyBoat.co.uk (MoneyBoat) gave her a loan which she couldn't afford to repay.

What happened

I've provided a detailed timeline as to what has happened due to the passage of time since the original complaint was made as well as the steps the Financial Ombudsman Service has taken to date. I've done this so both parties have this to hand.

Ms T was advanced one loan on 25 February 2020 for £500. Ms T was due to make six monthly repayments of £161.60 and the loan was repaid on 24 September 2020.

Following Ms T's complaint on 4 March 2021, MoneyBoat wrote to her in a final response letter (FRL) on 8 March 2021 to explain why it wasn't going to uphold the complaint.

Unhappy with this response, Ms T referred the complaint to the Financial Ombudsman on 29 March 2021. On 30 March 2021 the Financial Ombudsman Service acknowledged the referral and asked Ms T to confirm that she agreed to the privacy declaration.

We didn't hear from Ms T again until 13 January 2022 when Ms T referred her current complaint here. This was after she had contacted MoneyBoat again who explained it wouldn't reinvestigate the complaint.

On 21 January 2022, the Financial Ombudsman wrote to Ms T to again asking for her to complete the privacy notice to allow us to move her complaint forward. Ms T responded to the request on 13 September 2022. In response, Ms T also provided reasons as to why she was late – I understand these reasons have also been given to MoneyBoat.

The Financial Ombudsman then wrote to MoneyBoat to ask for a copy of its file.

On 13 September 2022, MoneyBoat provided copies of emails between itself and Ms T. It also confirmed that it considered we couldn't take the complaint forward because Ms T had referred the complaint here more than six months after the final response letter was sent.

After the complaint was allocated to an adjudicator, on 6 February 2023 an adjudicator wrote to both parties to say the case had been referred to the Financial Ombudsman within the time limits that we must follow. The adjudicator said this because he could see that after receiving the FRL in March 2021, Ms T did refer it here, albeit the complaint wasn't progressed.

MoneyBoat responded to say that the Financial Ombudsman had "*missed the point of our objection*" because it didn't consider it fair that Ms T was in effect given an "*unlimited*" amount of time after referral to progress the complaint by providing consent. MoneyBoat says it "*...makes a mockery out of having the six-month time limit in the first place.*" MoneyBoat says this because "*...if you continue to be of the opinion that the delay is acceptable, then we would like clarity on how long a customer can be afforded once first*

contact with FOS [Financial Ombudsman Service], until they have to give consent as this means we may have to assume cases are never truly closed...”

The adjudicator responded to say, that nothing MoneyBoat had provided demonstrated the case was outside of the jurisdiction rules that we must abide by. However, he did explain the case would be passed to a different adjudicator to determine whether the case should be dismissed (or not). This is a different and separate process to whether the case is in jurisdiction.

A different adjudicator considered the complaint and decided it was one that ought to not be dismissed. The adjudicator explained that it was a question of us exercising our discretion whether a complaint is dismissed. He accepted there were two periods of time where Ms T had made contact with the Financial Ombudsman about this complaint. But given what has been provided as well as the explanations from Ms T about why there were delays, he was satisfied the complaint ought not be dismissed and could proceed to be investigated.

MoneyBoat disagreed and asked for the case to be considered by an ombudsman because it said that it hasn't yet been provided with anything that meets the high bar of exceptional circumstances.

As no agreement has been reached on progressing Ms T's complaint, the case was passed to me to issue a decision.

I then issued my provisional decision explaining the reasons why I thought the Financial Ombudsman could consider Ms T's complaint. But my provisional decision also covered the merits and I explained that I was also intending to not uphold Ms T's complaint about her loan. A copy of the provisional findings follows this in italics and smaller font and forms part of this final decision.

Both Ms T and MoneyBoat were asked to provide anything new for consideration as soon as possible, but in any event, no later than 15 March 2023.

Neither Ms T nor MoneyBoat responded to the provisional decision.

As this deadline has now passed, I see no reason to delay the issuing of the final decision.

What I said in my provisional decision:

Why this complaint is within the jurisdiction of the Financial Ombudsman

For completeness, I've explained below why I consider this complaint was referred to the Financial Ombudsman within the time limits I must consider.

When looking at a complaint, the time limits I must consider and which I must apply are those set out in DISP 2 of the Financial Conduct Authority (FCA) Handbook. These rules are ones the Financial Ombudsman must abide by and follow. The rule that's relevant here is DISP 2.8.2R. I have set out some of that rule, so MoneyBoat and Ms T have it easy to hand. DISP 2.8.2R:

“The Ombudsman cannot consider a complaint if the complainant refers it to the Financial Ombudsman Service:

(1) more than six months after the date on which the respondent sent the complainant its final response, redress determination or summary resolution communication;

So, the DISP rules are clear. If Ms T referred the complaint to the Financial Ombudsman more than six months after the FRL than we can't take the complaint forward (subject to any exceptional circumstances that may apply).

In this case, MoneyBoat issued the FRL on 8 March 2021, and so Ms T had until 8 September 2021 in which to refer the complaint here. I can see, from our records, that Ms T did refer the complaint here on 29 March 2021. This is well within the six months' time scale afforded to her by the DISP rules.

I accept, that at this point of time, the Financial Ombudsman wasn't able to progress her complaint as we needed her to confirm the privacy notice and consent but that isn't a requirement under the DISP rules for the purpose of establishing whether the complaint was referred on time. As the rules say above, Ms T just had to refer the complaint here within six months which I am satisfied she has done.

Therefore, I am satisfied that the case is within our jurisdiction, but I've gone on to consider whether this complaint ought to be dismissed given the gaps in contact between March 2021 and January 2022 and then from January 2022 and September 2022.

Why I think the Financial Ombudsman can look at this complaint

I have considered all the evidence and arguments made by MoneyBoat and Ms T in order to decide whether it is right for the Financial Ombudsman to look at this complaint. We can help with a wide variety of financial services complaints, and we do have discretion to decide that some cases shouldn't be considered.

Under the Financial Conduct Authority DISP rules which govern the way we handle complaints, DISP 3.3.4A (for complaints received after 9 July 2015) provides grounds on which we may dismiss a complaint without looking at the merits first. I've set out the possible reasons to dismiss below;

The Ombudsman may dismiss a complaint referred to the Financial Ombudsman Service on or after 9 July 2015 without considering its merits if the Ombudsman considers that:

- (1) the complaint is frivolous or vexatious; or
- (2) the subject matter of the complaint has been dealt with, or is being dealt with, by a comparable ADR entity; or
- (3) the subject matter of the complaint has been the subject of court proceedings where there has been a decision on the merits; or
- (4) the subject matter of the complaint is the subject of current court proceedings, unless proceedings are stayed or sisted (by agreement of all parties, or order of the court) so that the matter may be considered by the Financial Ombudsman Service; or
- (5) dealing with such a type of complaint would otherwise seriously impair the effective operation of the Financial Ombudsman Service.

Having looked at the five possible reasons, I've concluded subsections 1 – 4 don't apply in this case and I've explained why. Clearly the complaint isn't frivolous – as it concerns whether MoneyBoat did all it ought to have done before granting a loan.

The matter isn't being considered (as far as I'm aware) by an alternative dispute service, this complaint isn't subject to court proceedings and there is nothing to show that a merits judgement has been made or the complaint sisted. Therefore, I've considered, in this case, whether subsection (5) applies.

DISP 3.3.4B then gives some examples of whether proceeding would impair the effective operation of the Financial Ombudsman – but this list isn't an exhaustive list and I can foresee some examples that don't appear in the list that may lead us to dismiss a complaint.

In effect, MoneyBoat is arguing that by not dismissing the complaint the Financial Ombudsman is in effect allowing complaints to continue indefinitely and go beyond the six month timeline outlined

earlier on in the decision. I've thought about this, but taking account of the evidence I've been provided, I'm not satisfied that progressing the complaint would seriously impair the Financial Ombudsman's effective operation.

To be clear, jurisdiction and dismissal are two separate considerations and have different rules, and guidance to look at. For example, jurisdiction is clear about when a complaint can be taken forward. Whereas a dismissal, as the adjudicator has explained is down to our discretion.

The complaint wasn't referred to us late, as I've explained above, the complaint was referred on time albeit we weren't able to convert and progress the complaint. In summary, there was in effect an 18-month window (between March 2021 and September 2022) after Ms T referred the complaint to when we were in a position to take the case forward.

Now, I understand and appreciate the arguments MoneyBoat is making. However, I want to be clear that this outcome is based on the individual circumstances of this complaint. I completely understand why MoneyBoat would like some clarity over how big a gap is acceptable. Unfortunately, this decision can only deal with Ms T's complaint but some factors that are considered but not limited to are, the type of complaint, the nature of the complaint, details of any contact, what a consumer may or may not have been told, the time gap itself and finally what information / evidence has been provided.

So, I can foresee a set of circumstances whereby so much time has elapsed that it would be unfair to continue with the investigation because for example a lender may have reasonably deleted some evidence that we may require, because it assumed – that the case wouldn't be progressed to the Financial Ombudsman due to the passage of time. Or, I could see, that a gap of 18 months is sufficient to say that the complaint ought to be dismissed but given everything I've seen I'm intending to use my discretion and not dismiss the complaint.

MoneyBoat may find that the 18-month delay to be unfair to it, and certainly I agree that Ms T's delay is a cause for concern. But MoneyBoat has not demonstrated to me that the delay has had an impact on its ability to furnish us with details of the case – such as the types of checks it carried out at the time the loan was granted.

The delay has not prevented it for example in sending us a copy of the FRL or a copy of the email where the FRL was attached. And, the FRL is fairly detailed about the types of checks and the information MoneyBoat gathered and saw at the time when the loan was approved. And so just based on this the Financial Ombudsman would be able to come to some conclusions about what happened at the time, and so I'm reasonably confident that the Financial Ombudsman can provide an answer to Ms T about the merits of the complaint.

The DISP rule referred to above is one where I can apply my discretion. I must weigh up how it is that MoneyBoat has been prejudiced by the time delay from Ms T's initial referral in March 2021 and when the case was progressed in September 2022. And I have looked at the explanation Ms T have given I am minded not to dismiss.

I am sorry to hear she has had to deal with several personal issues, and she says that she wasn't in the right frame of mind to continue with her complaint. I'm also sorry to hear about Ms T's health problems but I do hope things have improved for her now. I don't feel the need to say more about them because I'm already satisfied that this is a complaint that can be taken forward.

I have the option to choose to use my discretion to stop a complaint from proceeding despite us having enough evidence on file to be able to reach a fair outcome. Having balanced what I do have from both sides then I have decided that this complaint is not one which should be prevented from proceeding.

So ordinarily, the complaint would be referred back to an adjudicator to investigate the merits of the complaint. But based on the information that I've been provided with to date, I have sufficient evidence to be able to issue an assessment on the merits of complaint. Therefore,

to prevent any further delays and to provide Ms T with an outcome, I've gone on to consider whether the merits of the complaint.

Having thought about everything, I've decided that having looked at the merits of the complaint, this is one that I'm proposing to not uphold, and I've explained why below.

What I've provisionally decided about the merits – 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 Ms T could afford to pay back the amount 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 Ms T'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 Ms T. These factors include:

- *Ms T 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);*
- *Ms T 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);*
- *Ms T 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 Ms T. As there was only one loan the adjudicator didn't think this applied to Ms T's complaint.

MoneyBoat was required to establish whether Ms T could sustainably repay the loan – 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 Ms T 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 Ms T's complaint.

For this loan, as part of her application, Ms T declared a monthly income of £1,600. She declared monthly outgoings of £300 to cover a number of different items including, food, other credit commitments, transport and 'other'.

It is worth saying here that Ms T didn't declare any figures for her rent. In some situations that may be concerning because without explanation it would be unlikely that there wouldn't be some rent costs. However, MoneyBoat says that as part of the application Ms T informed it she was living at home with parents. So, in this case, MoneyBoat would've been satisfied

with the explanation provided by Ms T and as it was the first loan, MoneyBoat was entitled to rely on the information it had been provided about Ms T's living arrangements. I'd consider it a proportionate approach by MoneyBoat.

However, MoneyBoat increased Ms T's monthly expenditure by a further £740. It did this because as it explained:

On your loan application 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. Having taken this extra measure to ensure the loan was affordable for you, you still displayed enough disposable monthly income to meet the monthly repayments in full.

Therefore, as part of the affordability assessment, MoneyBoat concluded that Ms T had around £560 disposable income in which to afford her loan repayments of around £162. The loan therefore looked affordable.

MoneyBoat has also said it carried out a credit search but as yet hasn't provided any results that it may have seen. This could be, that these are no longer available due to the passage of time, or because it disagreed with whether we could progress the complaint.

So, I don't (at the moment) know whether these credit check results would've highlighted that it needed to have carried out further checks or ought to have led it to conclude. In response to the provisional decision, if it can, MoneyBoat should try and provide details of its credit checks. In addition, Ms T also hasn't provided a copy of her credit file either.

But I want to add, that even though MoneyBoat likely carried out a credit search there is no requirement within the regulations at the time for it to have carried out a search let alone one to a specific standard. But what MoneyBoat couldn't do is carry out a credit search and then not react to any concerning information that it may have seen.

Thinking about the income and expenditure information as well as the other checks carried out, there was also 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 it carried out – such as verifying the information Ms T had provided.

Given it was early on in the lending relationship, I think it was reasonable for MoneyBoat to have relied on the information Ms T provided about her income and expenditure to show she had sufficient disposable income to afford the repayments.

It's also worth adding that I've read the content of the email Ms T sent MoneyBoat on 26 September 2022, whereby she asked for the loan to be removed from her credit file. I just want to make it clear, that even if I had sufficient information to uphold the complaint – which I don't. I wouldn't have asked MoneyBoat to remove the loan from the credit file, because it would've been too early in the lending chain for MoneyBoat to have reasonably concluded the lending was harmful for Ms T – without carrying out further checks. At best, I may have recommended for the adverse credit file information to be removed – if any was recorded.

Overall and based on the evidence that I currently have to hand, I'm planning to not uphold Ms T's complaint.

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.

As neither party has provided anything further for consideration, I see no reason to depart from the findings that I previously made.

Ms T referred her complaint to the Financial Ombudsman within the times limits that I must consider and for the reasons I've previously explained, I am choosing not to dismiss the complaint.

However, having looked the at the evidence which has been provided I have also come to the conclusion that MoneyBoat carried out a proportionate check which showed it Ms T would be able to afford her loan repayments. I do not uphold Ms T's complaint.

My final decision

For the reasons I've explained above and in the provisional decision, I'm not upholding Ms T's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms T to accept or reject my decision before 14 April 2023.

Robert Walker
Ombudsman