DRN-4344885

The complaint

Mr P complains that Evergreen Finance London Limited trading as MoneyBoat.co.uk ("MoneyBoat") provided him with loans without carrying out the proper checks and had it done so it would've discovered his poor credit history.

What happened

Mr P was advanced three loans, a summary of his borrowing can be found below.

loan number	loan amount	agreement date	repayment date	instalments	instalment amount
1	£250.00	11/12/2021	31/03/2022	4	£92.74
2	£400.00	05/04/2022	31/08/2022	5	£133.13
3	£450.00	02/09/2022	outstanding	6	£137.86

Following Mr P's complaint, MoneyBoat wrote and explained the checks it had carried out before each loan was approved and why it considered those checks to be proportionate. MoneyBoat didn't uphold the complaint. Unhappy, with this outcome, Mr P referred the complaint to the Financial Ombudsman.

An adjudicator reviewed the complaint, and he upheld it in full and said none of the loans ought to have been advanced to Mr P. He said the credit checks MoneyBoat conducted showed for each loan there were at least five other outstanding payday loans. Which led the adjudicator to conclude Mr P was already having money management problems.

MoneyBoat didn't agree with the proposed outcome, saying not all of the outstanding loans were payday loans and even factoring in the cost of the outstanding loans the MoneyBoat loans looked affordable.

The adjudicator wrote to MoneyBoat and provide more details about the loans he had seen and why he thought the outcome he had reached was fair. MoneyBoat still didn't agree, and as no agreement could be reached, the case was then passed to me to decide.

I then issued a provisional decision explaining the reasons why I was intending to uphold Mr P's complaint in full but for different reasons than the ones reached by the adjudicator.

Both parties were asked to provide any further comments or information as soon as possible, but in any event no later than 21 September 2023.

Both Mr P and MoneyBoat have responded to acknowledge receipt of the provisional decision, and both said they had nothing further to add.

As both parties responded before the in the provisional decision, I see no reason not to proceed to issue the final decision.

A copy of the provisional findings follows this in smaller font and forms part of this final decision.

What I've provisionally 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 P 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 P'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 P. These factors include:

- *Mr P 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 P 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 P 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 P. The adjudicator didn't think this applied to Mr P's complaint.

MoneyBoat was required to establish whether Mr P 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 P 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 P's complaint.

Loan 1

MoneyBoat has shown that as part of the affordability assessment it asked Mr P for details of his income and expenditure. Mr P's income has been recorded as being £1,850 per month. MoneyBoat says the income was checked through a third-party report provided by a credit reference agency.

Mr P also declared his monthly outgoings were £1,320 – which covered a number of categories such as rent, food and credit commitments. However, following further checks including a credit search – MoneyBoat didn't think it needed to increase Mr P's declared monthly expenditure.

This left Mr P with disposable monthly income of £530. This was more than sufficient for

MoneyBoat to believe Mr P could afford the largest monthly repayment of around £93. The loan looked affordable.

Before this loan was approved MoneyBoat also carried out a credit search and it has provided the Financial Ombudsman Service with a copy of the results it received from the credit reference agency. I want to add that although MoneyBoat carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard. But what MoneyBoat couldn't do, is carry out a credit search and then not react to the to the information it received – if necessary.

MoneyBoat was also entitled to rely on the information it was given. So, I've taken a look at the results to see whether there was anything contained within it that would've either prompted MoneyBoat to have carried out further checks or possible have declined Mr P's application. Which is important because the rationale for the adjudicator to uphold this loan was due to the number of outstanding payday loans at the time.

Like the adjudicator I can see a number of outstanding loans, but these don't appear to have been payday loans. Have considered the repayment term and the amounts borrowed it is likely only one of Mr P's outstanding loans was a payday loan. And so, it's likely the other loans were either from home credit providers or possible other high cost credit providers.

But MoneyBoat was on notice that Mr P had several larger and longer-term loans outstanding. Indeed, the total cost to Mr P just to service these loans each month was £865 – Mr P needed to spend nearly half of his income solely on servicing existing loans. In my view, given he still had credit cards to service, and other bills as he declared (as well as the payments towards this loan) this was too great for Mr P.

On top of his loan repayments, Mr P also had two current accounts that had been reported as being well maintained. In addition, it knew of two credit cards, one had recently been opened and didn't have a balance.

Whereas the other credit card had a balance of £948 against a credit limit of £900. Mr P was over his credit limit and looking back through the repayment history of that credit card I can see that Mr P had been at, or very close to, his limit each month he had the card. I can also see he had taken a number of cash advancements as well. And so, Mr P's credit commitments would've been greater still. And cash advances from credit cards can be a sign of financial distress.

In addition in 2021, MoneyBoat was aware that Mr P had settled 10 other loans, and looking at the start date of those loans, the amount borrowed and the monthly repayment it is likely most or all of these were payday loans. The number of settled loans does indicate that Mr P had an ongoing need for credit – and this need had been apparent for some time.

Just using the loan repayments plus the other information Mr P declared to MoneyBoat about his rent for example, means that is monthly outgoings were likely to be at least £1,635. This left £215 per month – which was enough to cover the loan repayments. But, given the fact that Mr P had a history of taking out loans and with his MoneyBoat loan he would've needed to have paid over 50% of his income just to service his loans, in my view this wasn't sustainable and so the loan ought to not have been advanced.

I am intending to uphold Mr P's complaint about this loan but for different reasons.

Loans 2 and 3

The same sort of checks was carried out for these loans as they were for loan one. Mr P was asked about his income – which remained the same for loan two but had increased to £1,950 per month for loan three.

Mr P was again asked about his expenditure and these figures had decreased since loan one, and like loan one, following credit checks MoneyBoat hadn't made any adjustments to *these figures. Overall, Mr P had £840 of monthly disposable income for loan two and £900 when loan three was advanced. The loans looked affordable.*

As before a credit search was conducted, and the results were much the same as those MoneyBoat provided for when loan one was advanced. For loan two, Mr P still had five active loans (and his first loan was still showing as outstanding). He had also had problems repaying one of these loans because by February 2022, the account was showing as being two months in arrears.

For loan three, Mr P still had five outstanding loans – and some were payday. In addition, between loan two being closed and loan three being opened, Mr P had settled another three loans of which one was only settled after it had fallen into arrears. By this point, Mr P was now over his credit limit on one of his credit card accounts again.

The credit checks still show that Mr P was regularly being granted new loans and given the terms and the amounts these are likely to be payday loans. And Mr P was still demonstrating that he was having problems repaying his existing creditors.

So, for similar reasons as loan one, I think MoneyBoat ought to have concluded that Mr P wouldn't have been able to sustainably repay these loans either.

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 both Mr P and MoneyBoat didn't have anything further to add to the findings that were reached in the provisional decision. I see no reason to depart from those findings in this final decision. I still think the credit check results MoneyBoat received from the credit reference agency ought to have alerted it that Mr P was unlikely to be able to repay his loans in a sustainable manner.

I therefore uphold Mr P's complaint in full and I've outlined below what MoneyBoat needs to do in order to put things right for him.

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 P, 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 Mr P may have simply left matters there, not attempting to obtain the funds from elsewhere. 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 reconstruct now accurately. 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 P in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr P 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 approved any of Mr P's loans.

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 P towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything MoneyBoat have already refunded.
B. MoneyBoat should calculate 8% simple interest* on the individual payments made by Mr P which were considered as part of "A", calculated from the date Mr P originally made the payments, to the date the complaint is settled.
C. MoneyBoat should remove all interest, fees and charges from the balance on loan three, and treat any repayments made by Mr P as though they had been repayments of the principal on the loan. If this results in Mr P 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 loan three. If this results in a surplus then the surplus should be paid to Mr P. However, if there is still an outstanding balance then MoneyBoat should try to agree an affordable repayment plan with Mr P.
E. MoneyBoat should remove any adverse information recorded on Mr P's credit file in relation to loans 1 – 3.

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

My final decision

For the reasons I've explained above and in the provisional decision, I'm upholding Mr P's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 12 October 2023.

Robert Walker
Ombudsman