

The complaint

Mr S complains Evergreen Finance London Limited trading as MoneyBoat.co.uk ("MoneyBoat") gave him a loan he couldn't afford to repay.

What happened

Mr S was granted one loan of £800 on 14 December 2022. Mr S was due to make three monthly repayments of £342.39. As of February 2023, an outstanding balance remained due, but it is possible that the loan has now been repaid.

MoneyBoat reviewed Mr S's complaint and didn't uphold it. Unhappy with this response, Mr S referred the complaint to the Financial Ombudsman.

An adjudicator then considered the complaint, and she didn't uphold it because she thought MoneyBoat had carried out proportionate checks.

Mr S didn't agree with the outcome, saying in summary:

- He had a number of defaults, with two of them not yet satisfied.
- Mr S was utilising over 90% of his available credit – which ought to have been a red flag.
- There were three County Court Judgements (CCJ)s on his credit file.
- He provided a list of creditors that were outstanding (and the value of those debts) at the time this loan was advanced.

As no agreement could be reached, the case was passed to me for a decision, I then issued my provisional decision explaining the reasons why I was intending to uphold Mr S's complaint.

Both parties were asked to provide anything further for consideration as soon as possible, but in any event, no later than 29 September 2023.

Mr S didn't have any further comments or information that he wanted to present and MoneyBoat acknowledged the provisional decision but didn't have anything further to add.

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 Mr S could afford to pay back the amount

he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. MoneyBoat's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr S'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 S. These factors include:

- Mr S 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 S 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 S 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 S. The adjudicator didn't consider this applied to Mr S's complaint as there was only one loan and I agree.

MoneyBoat was required to establish whether Mr S could sustainably repay the loan – 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 S was able to repay his loan sustainably. But it doesn't automatically follow that this is the case.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr S's complaint.

Before the loan was approved, MoneyBoat asked Mr S for details of his income, which he declared as being £2,784 per month. MoneyBoat says the income figure was checked either by obtaining a copy of Mr S's wage slip or by cross referencing information through a third-party report. MoneyBoat also says that it confirmed Mr S's employment prior to the loan being funded.

Mr S also declared monthly outgoings of £2,000 which included but not limited to a number of categories such as a rent/mortgage payment of £500, £500 for credit commitments and £100 for transport.

As part of the application, MoneyBoat used information from its credit search (which I'll discuss below) as to decide whether it needed to adjust the declared expenditure Mr S had provided. As a result, of this check, Mr S's monthly expenditure wasn't increased, so MoneyBoat believed his outgoings to be £2,000 per month.

After carrying out these checks, Mr S's disposable income was £784 per month in order to meet his loan repayments of around £342. So, the loan based on the income and expenditure details looked affordable.

Before the loan was approved MoneyBoat also carried out a credit search and it has provided a summary of the results it received from the credit reference agency. It is worth saying here that although MoneyBoat carried out credit searches, there isn't a regulatory requirement to do one, let alone one to a specific standard. And its these credit search results that I am concerned about in this case, considering as part of the application process Mr S declared only £500 of credit commitments.

Looking at the results, MoneyBoat knew that Mr S owed total debts of around £22,000 but nearly £15,000 of that was owed towards a hire purchase (HP) agreement – which I am assuming to likely be a vehicle.

MoneyBoat knew within the last six years Mr S had defaulted on a total of five accounts. And while these were historic in nature (the defaults being recorded between 2017 and 2019) and most had been satisfied. I don't think these alone were enough to uphold the complaint. But it did show that in the years before the loan was approved, Mr S experienced financial difficulties.

In addition to the defaults, there were also two satisfied CCJs but the most recent one was granted in 2019 and satisfied in January 2020. As above this was further indication that in the not too distance past, Mr S had experienced some difficulties.

However, the credit checks gave an overview of his active accounts, it knew that Mr S had one HP agreement, one payday loan and then three other longer-term loans termed "Finance House" outstanding at the time the loan was advanced.

All of these Finance House loans had been opened in 2022 with the most recent being opened two weeks before this MoneyBoat loan was granted. The cost to service these agreements came to around £843 per month – significantly more than the £500 that Mr S had declared as part of his application.

In addition, there were also four credit cards with total outstanding debt of £3,578 and looking at a minimum payment – Mr S would likely be expected to make a payment of at least £180 to service these accounts each month. Although it's worth saying here that looking at his repayment history, Mr S typically paid more than that each month. Overall, even before the loan was approved Mr S had outstanding credit commitments of at least £1,020 per month.

If you substitute this figure into the other expenditure information MoneyBoat obtained – for example with the costs declared for rent, food and transport. This gives a total monthly expenditure of £2,520 leaving £264 per month in disposable income. But this disposable income isn't enough to cover the loan repayments, because the loan repayments were contracted to be £342.39 per month. Clearly, the loan was unaffordable based on the information MoneyBoat gathered.

Had MoneyBoat fully considered the credit commitments that it was told about – in the credit search it ought to have concluded that Mr S couldn't afford his loan repayments and therefore I am intending to uphold his complaint.

I've outlined below what MoneyBoat needs to do in order to put things right for him.

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 Mr S nor MoneyBoat has provided anything new for my consideration I see no reason to depart from the findings that I reached in the provisional decision. I still don't think, the loan was affordable for Mr S when taking account of the outstanding debts that were visible in the credit check results and what Mr S declared about his other living costs.

I am therefore upholding Mr S's complaint 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 S. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr S may have simply left matters there, not attempted 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, Mr S 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 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 (responsible) lender would have been able to lend to Mr S 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 S 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 lent to Mr S and the redress below deals with both situations as I can't be sure whether the loan has been repaid.

If MoneyBoat have sold the outstanding debt, it should buy it back if MoneyBoat is able to do so and then take the following steps. If MoneyBoat can't buy the debt back, then MoneyBoat 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 S towards interest, fees and charges towards the loan without an outstanding balance, not including anything MoneyBoat have already refunded.
- B. MoneyBoat should calculate 8% simple interest, less deductible tax* on the individual payments made by Mr S which were considered as part of "A", calculated from the date Mr S originally made the payments, to the date the complaint is settled.
- C. MoneyBoat should remove all interest, fees and charges from the balance of the loan, and treat any repayments made by Mr S as though they had been repayments of the principal on the outstanding loan. If this results in Mr S having made overpayments then MoneyBoat should refund these overpayments with 8% simple interest, less deductible tax* calculated 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 outstanding loans. If this results in a surplus, then the surplus should be paid to Mr S. However, if there is still an outstanding balance then MoneyBoat should try to agree an affordable repayment plan with Mr S.
- E. MoneyBoat should remove any adverse information recorded on Mr S's credit file in relation to the loan.

*HM Revenue & Customs requires MoneyBoat to deduct tax from this interest. MoneyBoat should give Mr S 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 S's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 November 2023.

Robert Walker
Ombudsman