

## The complaint

Miss K complains through a representative that Evergreen Finance London Limited trading as MoneyBoat.co.uk (“MoneyBoat”) gave her loans without carrying out proportionate affordability checks.

## What happened

A summary of Miss K’s borrowing can be found in the table below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment per loan
1	£200.00	07/05/2021	04/06/2021	2	£124.94
2	£300.00	04/06/2021	outstanding	6	£90.87

Miss K had some problems repaying her final loan and it appears from MoneyBoat’s statement of account that she has been paying £5 or £10 per month towards the balance since October 2021.

Following Miss K’s complaint about her loans, MoneyBoat considered the complaint and concluded it had made a reasonable decision to lend and so it didn’t uphold it. Unhappy with this response, Miss K’s representative referred her complaint to the Financial Ombudsman.

The complaint was considered by an adjudicator, who didn’t uphold it. She said MoneyBoat carried out proportionate checks and there wasn’t anything to suggest the loans would be unsustainable for her.

Miss K’s representative didn’t agree saying that before the loans were approved Miss K had defaulted on a number of accounts and had at least nine accounts with late payment markers recorded on her credit file. In the representative’s view she was borrowing money from other lenders in order to try and keep up with her repayments.

The complaint was then passed to me, and I proceeded to issue a provisional decision outlining why I was intending to uphold Miss K’s complaint in full. Both parties were asked to provide anything further for my consideration as soon as possible, but in any event, no later than 8 December 2023.

MoneyBoat said it didn’t have anything further to add and Miss K’s representative let us know she had accepted the proposed outcome.

Although the deadline for further submissions has not yet passed, as both parties have responded to the provisional decision, I see no reason to delay the issuing of this final decision.

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 K 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 have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Miss K'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 K. These factors include:*

- Miss K 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 K 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 K 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 K. The adjudicator didn't consider it reached the point in the lending relationship where this applied and I agree, as there were only 2 loans.*

*MoneyBoat was required to establish whether Miss K 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 K was able to repay her loan sustainably. But it doesn't automatically follow that this is the case.*

*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 K's complaint.*

*Before these loans were approved, MoneyBoat asked Miss K for details of her income, which she declared as being £1,265 per month for both loans. MoneyBoat says the declared income figures were checked through a credit reference agency.*

*Miss K also declared monthly outgoings of £947 for loan 1 and £972 for loan 2. As part of the application, MoneyBoat used information from its credit search results and from the common financial statement to adjust the declared expenditure Miss K had provided. As a result, Miss K's monthly expenditure was increased by a further £119 for loan 1 and an additional £169 per month for loan 2.*

*After carrying out these checks, Miss K had sufficient disposable income to be able to afford the repayments she had to make. But I would point out there wasn't very much of a buffer to cover any unexpected costs – for example, for loan 2 after the loan repayment Miss K only had around £33 per month left over each month for six months. That isn't a lot.*

*Before the loans were approved MoneyBoat also carried out a credit search and it has provided a copy 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. But what MoneyBoat couldn't do is carry out a credit search and then not react to the information it received – if necessary.*

*Both credit check results are fairly similar which isn't too much of a surprise given the close proximity of the when they were conducted. MoneyBoat would've been aware of some historic difficulties that Miss K had. I can see four defaulted accounts, but these were defaulted in either 2016 or 2018 and all of them had since been satisfied. There was also an unsatisfied County Court Judgement from September 2018. But this information was in my view, too far removed from the loan start dates to have given MoneyBoat any cause for concern.*

*But in saying that, MoneyBoat was given information from the search results that showed not only that what Miss K declared about her credit commitments wasn't accurate but actually, given her modest income it now made the loans unaffordable, and I've explained why below.*

*MoneyBoat did know that Miss K had a number of outstanding credit card balances, an outstanding loan, a monthly insurance payment and mail order accounts. And so MoneyBoat ought to have known that the amount Miss K declared for her credit commitments as part of her application for both loans (£197) wasn't high enough to cover her existing credit commitments. The costs that Miss K did declare appeared to be sufficient to cover the cost of one outstanding loan that she had, as the payments for that was £197 per month.*

*Had MoneyBoat increased her credit commitments in line with solely with the insurance cost of £232 per month – which it knew about (and excluding the cost Miss K had for credit cards and mail order accounts) so the actual monthly credit commitments Miss K had were larger. This gave her (before any of the other adjustments MoneyBoat made) total monthly outgoings of £1,179 for loan 1 and £1,220 per month for loan 2.*

*With a declared income of £1,265 this only left £86 per month for loan 1 and £45 per month when loan 2 was advanced. This meant Miss K didn't have enough disposable income when loans 1 and 2 were granted to afford the repayments to MoneyBoat. And of course, MoneyBoat for both these loans added additional costs (which I haven't factored into these calculations). If those extra costs were factored in, then clearly Miss K didn't have enough money to afford her repayments.*

*I am therefore intending to uphold both of Miss K's loans because the checks MoneyBoat carried out showed that Miss K couldn't afford her repayments. I've outlined below what MoneyBoat needs to do in order to put things right for her.*

### **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 K, through her representative accepted the conclusions I reached in the provisional decision. MoneyBoat said it had nothing further to add. Therefore, as no new submissions have been made, I see no reason to depart from the findings I reached in the provisional decision.

I still don't think MoneyBoat ought to have lent either loan to Miss K given the information she provided as part of her application as well as the results of the credit searches which MoneyBoat received. This information showed Miss K didn't have sufficient disposable income to afford either of her loans.

I've outlined below what MoneyBoat has agreed to do in order to put things right for her.

## 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 Miss K, 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 K 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 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 K 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 K 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 K any of her loans.

If MoneyBoat has sold the outstanding debt, then it should buy it back if MoneyBoat 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 Miss K towards interest, fees and charges on loan 1, not including anything MoneyBoat have already refunded.
- B. MoneyBoat should calculate 8% simple interest\* on the individual payments made by Miss K which were considered as part of "A", calculated from the date Miss K originally made the payments, to the date the complaint is settled.
- C. MoneyBoat should remove all interest, fees and charges from the balance of loan 2, and treat any repayments made by Miss K as though they had been repayments of the principal. If this results in Miss K 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 2. If this results in a surplus then the surplus should be paid to Miss K. However, if there is still an outstanding balance then MoneyBoat should try to agree an affordable repayment plan with Miss K and I would remind it of its obligation to treat Miss K fairly and with forbearance.
- E. MoneyBoat should remove any adverse information recorded on Miss K's credit file in relation to loans 1 and 2.

\*HM Revenue & Customs requires MoneyBoat to deduct tax from this interest. MoneyBoat should give Miss K a certificate showing how much tax it has 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 K's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 4 January 2024.

Robert Walker  
**Ombudsman**