DRN-4540708

The complaint

Mr S complains through a representative that Evergreen Finance London Limited trading as MoneyBoat.co.uk ("MoneyBoat") failed to conduct proportionate affordability checks prior to lending to him.

What happened

A summary of Mr S'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	14/03/2021	22/05/2021	3	£97.51
2	£200.00	16/07/2021	13/08/2021	3	£96.31
3	£1,200.00	15/08/2021	14/01/2022	5	£413.64
4	£1,300.00	14/01/2022	16/03/2022	5	£445.95
5	£200.00	23/03/2022	13/05/2022	2	£126.03
6	£450.00	14/05/2022	20/05/2022	6	£141.00
7	£250.00	21/05/2022	15/08/2022	6	£75.20
8	£200.00	21/08/2022	14/11/2022	3	£93.61
9	£400.00	16/12/2022	outstanding	6	£122.88

MoneyBoat considered the complaint and concluded it had made a reasonable decision to provide these loans because it had carried out proportionate checks which showed it Mr S could afford them.

However, as a gesture of goodwill it agreed to write off the outstanding balance that was due for loan 9 and it also offered to refund the interest he had paid on loans 6, 7 and 8. Unhappy with this response, the complaint was referred to the Financial Ombudsman.

The complaint was considered by an adjudicator, who partly upheld it. She didn't think MoneyBoat had done anything wrong when loans 1 and 2 were granted. But she upheld the complaint about the rest of the loans.

The adjudicator concluded that after MoneyBoat carried out a credit search it was on notice that Mr S's monthly credit commitments were greater than what he had declared. Using the figures from the credit file, as well as the other expenditure information Mr S declared he didn't have sufficient disposable funds to afford loan 3, and so the adjudicator upheld this and all other loans. Finally, by the time of loan 6 she thought the lending was now harmful for Mr S and was so the lending was unsustainable from this point onwards.

Mr S's representative accepted the adjudicator's findings.

MoneyBoat didn't fully agree with the proposed outcome, and it said "*Whilst I accept what MoneyBoat say for loan 3, from what I see the situation was different when it came to loan 4.*"

MoneyBoat said by loan 4 Mr S had greater disposable income and so loans 4 and 5 were affordable for him. MoneyBoat also said, that the amount borrowed for loan 5 was smaller, and so could be a sign that Mr S *"…might be managing out of the situation*."

In summary, MoneyBoat suggested a fair outcome to resolve the complaint would be to uphold loan 3 and then loans 6 to 9.

The adjudicator explained to MoneyBoat that as loan 3 ought to not have been granted it therefore follows, later loans such as loans 4 and 5 shouldn't have been lent either. MoneyBoat didn't agree and requested an ombudsman's review.

As no agreement could be reached the case was passed to me for a decision. I then issued a provisional decision outlining why I thought, loans 3 to 9 ought to be upheld. Both parties were asked to provide any further submissions by 29 December 2023.

Mr S's representative confirmed it had received the provisional decision and it had nothing further to add. MoneyBoat didn't provide a response to the provisional 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 Mr S 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 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 though it had reached this point in the lending relationship by loan 6.

MoneyBoat was required to establish whether Mr S 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 S was able to repay his loans 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.

Loans 1 and 2

Mr S appears to have accepted the adjudicator's findings that she made, which included not upholding these loans and MoneyBoat also doesn't appear to have disagreed that it wasn't wrong to have approved these loans.

In my view these loans are no longer in dispute, so I won't be making a finding about them, but I have kept these loans in mind when thinking about the rest of Mr S' borrowing history.

Loan 3

In response to the adjudicator's assessment, MoneyBoat accepted her findings that the loan was unaffordable based on the results of the credit check as well as the information Mr S gave to MoneyBoat as part of his application. Therefore, there is no need for me to review this loan and for completeness I've included this loan in the "putting things right" section at the end of the decision.

Loans 4 and 5

The adjudicator upheld these loans because in her view, harm was done to Mr S by advancing a loan that wasn't affordable – loan 3 and it therefore follows that these loans also ought to not have been provided. Whereas, MoneyBoat has said that Mr S's financial situation was different when these loans were approved – he had more disposable income and so it was reasonable for these to have been advanced.

I've thought carefully about these two loans and I do think there was enough information for MoneyBoat to have realised they shouldn't have been granted.

I do agree with the adjudicator that harm had already been done to Mr S – in as much as MoneyBoat had given him a loan where it had evidence that he didn't have a sufficient amount of disposable income to afford the repayments. And so, that harm likely continued when loans 4 and 5 were granted give the fact loan 4 was taken on the same day that loan 3 was repaid, and this loan was for a greater sum. So, I do think the evidence is there that these two loans were likely unaffordable and unsustainable for Mr S.

But even if I were to ignore, how the loans were taken (and their values) and just considered each loan in turn, I would still come to the same outcome – that these loans ought to not have been provided and I've explained why below.

Before the loans were approved, MoneyBoat asked Mr S for details of his income, which he declared as being £1,650 for loan 4 and £1,877 for loan 5. MoneyBoat says the income figures were checked through a third-party report.

Mr S also declared monthly outgoings of £620 for loan 4 and £678 for loan 5. As part of the application, MoneyBoat used information from its credit search (which I'll come onto discuss below) and from the "Common Finance Statement" to adjust the declared expenditure Mr S had provided. As a result, of this check, Mr S's monthly expenditure was increased by £230 per month for loan 4 and £182 per month for loan 5.

Meaning that when MoneyBoat conducted its affordability assessment, it believed, following its checks that Mr S's monthly outgoings amounted to £850 for loan 4 and £860 a month for loan 5. Just from the income and expenditure checks, MoneyBoat may have been confident that Mr S would've likely been able to afford his loan.

Before each loan was approved MoneyBoat also carried out a credit search and it has provided 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.*

For loan 4, the credit check results were in my mind still concerning enough that it ought to have led MoneyBoat to conclude that the loan wasn't affordable or sustainable. Firstly, MoneyBoat knew the £50 per month Mr S had declared for his credit commitments couldn't be accurate – because the credit report showed that his outstanding credit commitments to two loans was already £253 per month and on top of that he also had two credit cards and an overdraft that needed servicing. So, it's clear from the information MoneyBoat was given that Mr S's expenditure needed further review.

Secondly, MoneyBoat knew that Mr S had taken out a total of nine loans in the preceding six months, which is an average of more than one loan a month and could've potentially meant that Mr S was reliant on this sort of credit because there was a continued need to obtain it.

This is supported by the credit check results because in the six months before this loan was approved, Mr S had repaid five loans that had been categorised as "advance against income" – so a payday loan. There were also six unsecured loans settled in the same period of time - which given the amounts borrowed it is likely these were high-cost credit instalment loans.

So, for loan 4, given that harm had already been done to Mr S by MoneyBoat advancing loan 3, the fact that it knew he had undeclared his expenditure as well as the apparent constant need for Mr S to obtain new credit I do think all of these factors together ought to have made MoneyBoat conclude that Mr S was unlikely to be able to afford this loan in a sustainable manner.

A similar position was visible in Mr S's credit search results for loan 5. Mr S had similar levels of debt, he still had the same outstanding loan accounts and credit cards. This time, the number of new accounts opened in the last six months had dropped to 5, but that is still close to nearly one new credit facility each month which does suggest that Mr S was still reliant on high-cost credit because in the six months before this loan was approved he had settled around 8 loan accounts. So, Mr S was continuing to demonstrate that he was repaying loans and then immediately returning for further credit.

I've considered what MoneyBoat has said about the value of the amount advanced to Mr S, and of course this loan was significantly smaller than the previous two loans that Mr S had taken. But Mr S had still returned fairly quickly for a new loan and was committing himself to spend further time in debt after having already been indebted for the previous year. I've noted this point, given everything else MoneyBoat discovered I am still concluding that loan 5 also ought to not have been advanced.

I am therefore intending to uphold Mr S's complaint about loans 4 and 5.

Loan 6 – 9

Again, MoneyBoat, in the final response letter as well as in response to the adjudicator's assessment agreed to put things right for Mr S in relation to these loans. So, there isn't a need for me to make a formal finding about whether MoneyBoat was correct (or not) in providing these loans.

For completeness, I've once again included these loans in the putting things right section at the end of this 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.

No new submissions were provided in response to the provisional decision, so I've reached the same conclusions I reached before, for the same reasons. I still don't think MoneyBoat ought to have provided loans 3 to 9 to Mr S for the reasons given above.

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

Putting things right

In deciding what redress MoneyBoat should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr S from loan 3, 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 S may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular lender which they may not have had with others. 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 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 given Mr S loans 3 - 9.

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 isn't able to 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 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 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 on any upheld outstanding loans, and treat any repayments made by Mr S as though they had been repayments of the principal on all outstanding loans. If this results in Mr S 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 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 loans 3, 4 and 5. The overall pattern of Mr S's borrowing for loans 6, 7, 8 and 9 means any information recorded about them is adverse, so MoneyBoat should remove these loans entirely from Mr S's credit file. MoneyBoat does not have to remove loan 9 from Mr S's credit file until it has been repaid, but MoneyBoat should still remove any adverse information recorded about it.

*HM Revenue & Customs requires MoneyBoat to deduct tax from this interest. MoneyBoat should give Mr S a certificate showing how much tax has been 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 in part.

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 7 February 2024.

Robert Walker
Ombudsman