

The complaint

Mr S complains Evergreen Finance London Limited trading as MoneyBoat.co.uk ("MoneyBoat") gave him a loan without carrying out sufficient affordability checks.

Mr S is also unhappy that MoneyBoat didn't help him set up a repayment plan or freeze the interest when he was in financial difficulties. Instead, it sought and was granted a County Court Judgement (CCJ).

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	£800.00	17/12/2019	outstanding	6	£228.57

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

It was referred to the Financial Ombudsman Service. The complaint was then considered by an investigator, who upheld the complaint about MoneyBoat's decision to lend. She said MoneyBoat ought to have been prompted to have carried out further checks into Mr S's finances. Had further checks been conducted MoneyBoat would've likely discovered Mr S was overdrawn and was making payments to another payday lender. In her view, the loan was unaffordable.

Mr S let the investigator know that while he was content with the uphold, his main concern was the CCJ as this would remain on this credit file for six years – it was reported in January 2021.

MoneyBoat didn't agree with the investigator's assessment and in summary it said.

- The loan was affordable based on the income and expenditure information provided by Mr S.
- Mr S only had 7 active credit accounts including 2 longer term loans costing £582 per month, plus the credit card payments he had would have monthly credit commitment costs of no more than around £1,100 per month.
- There was no other information to suggest that Mr S was in financial distress.

As no agreement could be reached the case was passed to me. I then proceeded to issue a provisional decision explaining the reasons why I was intending to not uphold Mr S's complaint about MoneyBoat's lending decision. I also explained the reasons why I was planning to dismiss Mr S's complaint about the help and support offered.

Both parties were asked for any further submissions or comments. MoneyBoat didn't respond to or acknowledge the provisional decision.

Mr S didn't agree with the provisional decision and I've summarised his comments below;

- Mr S being just under his overdraft limit was a clear sign he couldn't afford the loan.
- The CCJ MoneyBoat was granted for this loan was done through the business fast track centre and so there was no court hearing.
- Mr S had a CCJ in 2015 for eight times as much as MoneyBoat lent to him and it has been ignored.
- MoneyBoat ignored a request by a debt advice charity to freeze the interest on the balance.
- Mr S's bank statements show that he was running out of money and there had been failed and returned payments.
- It isn't consistent for the ombudsman to 'u-turn' on the decision reached by the investigator.
- Mr S's bank wrote off a significant sum of money that was due for a credit card and an overdraft.

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. But I don't consider this applies to Mr S's complaint because only one loan was advanced.

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 and this was declared as being £5,700 per month after tax. MoneyBoat also says the income figure was checked through a third-party report provided by a credit reference agency. I consider this to a reasonable course of action for MoneyBoat to have taken given this was the first loan.

Mr S also declared monthly outgoings of £1,880. My understanding of MoneyBoat's affordability process is that it likely used information from its credit search (which I'll come onto discuss below) and / or from the "Common Finance Statement" to possibly adjust the declared expenditure Mr S provided. Having carried out this check, MoneyBoat didn't make any adjustments to Mr S's expenditure. So, for the affordability assessment on an income of £5,700 and outgoings of £1,880 Mr S had sufficient disposable income in which to afford his repayments.

MoneyBoat also carried out a credit search and it has provided the results it received from the credit reference agency for each loan. 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.

The credit check results as far as I can see there wasn't anything too concerning and so the results wouldn't have led MoneyBoat to carry out further affordability checks. It knew that in 2015 Mr S had experienced some financial difficulties. He had defaulted on two accounts, but both had been settled at the latest by April 2016. Mr S also had, in 2015 a CCJ recorded against him, but again this had been settled in November 2015.

So, at the point MoneyBoat lent to Mr S, there hadn't been any defaults or CCJs for over four years. The ones he did have had been settled and so I don't think in this case, MoneyBoat would've been too concerned by this historic adverse payment information because it didn't appear to reflect Mr S's current financial position.

MoneyBoat was told that Mr S had seven active accounts including two loan accounts, current accounts and credit cards. There was no indication from the credit search results that Mr S was dependant on payday loans or had been opening lots of new credit in the months before this loan was granted.

MoneyBoat was aware from the credit search results that the two loans – which were not payday loans – had monthly repayments of £582. On top of this it knew that Mr S owed credit card companies just over £4,000. This ought to have led MoneyBoat to have concluded the amount Mr S declared for his monthly credit commitments wasn't correct - £350. But had MoneyBoat added to his other commitments the amount that it saw in the credit search results – the outcome would be the same. That being that Mr S had sufficient disposable income to afford the loan.

There was some adverse payment information, one of the credit cards was over the limit and there had been repayment problems with one of his loans. But given the wider situation and what MoneyBoat was told about Mr S's circumstances. I think it was fair and reasonable for MoneyBoat to have approved this loan without needing to verify or check the information Mr S had provided. This means, MoneyBoat made a reasonable decision to lend and it didn't need to review the copy bank statements which Mr S provided.

Finally, I accept that MoneyBoat was given information to suggest that Mr S was quite close to his overdraft limit of £3,000. However, an overdraft isn't like a regular loan or other forms of credit in as much as there is no monthly repayment amount as set out in a credit agreement. Given what MoneyBoat knew about Mr S's income, it would've likely thought it was reasonable to have granted the loan – even though it knew that Mr S was using his

overdraft.

As this was the only loan granted and MoneyBoat carried out what I consider to be proportionate checks which showed it that Mr S would likely be able to afford his repayments, I think that it was in appropriate for MoneyBoat to have agreed to lend.

I'm therefore intending to not uphold Mr S's complaint about the lending decision.

Help and support

Mr S has also complained MoneyBoat didn't offer any help or support to him, instead all MoneyBoat did was to charge more interest and seek and then be granted a CCJ.

After the complaint was passed to me, I asked the investigator to make further queries with Mr S and MoneyBoat to establish what happened that led to the account not just defaulting but also Mr S ending up with a CCJ.

As part of these further questions, MoneyBoat supplied a copy of the CCJ judgement as well as the claim forms. These are the forms that Mr S completed prior to the CCJ being granted in order to allow him to provide any further comments, evidence or a defence.

I've carefully considered what has happened, and I appreciate Mr S will be extremely disappointed by the outcome, but having thought about everything, I am of the opinion the Financial Ombudsman Service ought not to consider what happened after the loan was granted in terms of the lack of support Mr S says he received. I've explained why below.

We can help with lots of financial service disputes, but it's not always appropriate for us to do so. 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 included the relevant section of DISP 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.*

Thinking about the above rules, I consider part of the complaint falls within DISP 3.3.4A(3) – the subject matter of this complaint has already been dealt with by the courts.

In summary the principle of estoppel prevents claims being made about the same issue twice. In this case, it means the issue of the help and support was considered by the courts and so we ought to not reopen and reconsider the this element of the complaint. I've quoted below, what Mr S provided to the courts before the CCJ was granted – this can be found in section "3. Defence...".

"I provide to MoneyBoat I am on universal credit way back in Sept, I have sent them the step change recommendation by email stating that they recommend that all payments are frozen for 12 months and to make no payments. MoneyBoat did not reply. They had previously accepted a £20 per month payment and despite keeping

them informed they now do this in full knowledge that I am on Universal credit and unemployed and cannot pay this. Vindictive prosecution of a debtors who cannot pay them, I offered the best that I can do in this situation. They should not be allowed to make such an application, why was this allowed.”

So as part of Mr S's defence, he made it clear he was unhappy with the actions of MoneyBoat and how it hadn't engaged with the third party nor suspended the interest for 12 months – as he had suggested. However, despite Mr S making this defence, a court on 8 January 2021 awarded a judgment in favour of MoneyBoat for £1,550. Based on the terms of that judgment it also ordered Mr S to make monthly payments of £20 per month.

Mr S's arguments around the lack of help and support and what happened that led to the CCJ being granted have, based on the paperwork that I've seen, been considered by the courts and even though Mr S had offered a defence the court still granted the CCJ. The consequences of this are that Mr S's points that he raised in his defence have been considered by the court and so it wouldn't be appropriate for us to reconsider the matter again.

As such, it isn't appropriate for the Financial Ombudsman Service to intervene because Mr S is in effect asking us to re-open an issue that the court already decided in relation to what happened up to the point the CCJ was awarded. I am therefore intending to exercise my discretion to dismiss Mr S's complaint in relation to this element of his complaint because the subject matter has already been the subject of court proceedings as per DISP3.3.4A (3).

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.

I have considered Mr S's responses to the provisional decision and having thought about what he said. I am still minded firstly not to uphold his complaint about the lending decision and secondly, it still isn't appropriate for us to consider the help and support received from MoneyBoat.

I do appreciate why Mr S is disappointed that I've changed the outcome that was reached by the investigator. But my role is independent of the investigator and I have to consider all the evidence that has been provided and then come to what I consider to be a fair and reasonable outcome. I am not bound to follow the findings and conclusions that an investigator may reach.

This does mean from time to time that an ombudsman may take a different view of a complaint and lead to outcomes being changed or even compensation payments being adjusted. I accept that does lead to disappointment but having taken an overview of the complaint and for the reasons I outlined in the provisional decision, I felt that the outcome needed to be changed.

It isn't clear as part of the affordability assessment how much weight (if any) was given to the CCJ that Mr S had on his credit file at the time. However, I did see the CCJ as part of my review of the complaint and noted the balance was significantly more than MoneyBoat had lent to him – around seven times. The CCJ was applied in June 2015 and has been marked as settled in November 2015.

The CCJ was visible on Mr S's credit file and ought to have been something considered by MoneyBoat. But in saying that, the CCJ had been recorded and settled over four years before the MoneyBoat loan was advanced.

Given the marketplace that MoneyBoat operates in, there is to some degree and expectation that customers may have less than perfect credit files. In this case, given the time that had elapsed since the CCJ had been granted I think it would've been entirely fair and reasonable for MoneyBoat not to have been overly concerned by the CCJ as a reflection of Mr S's ability to repay the loan.

The same applies to the two defaults that MoneyBoat was told about. These had been applied in 2015 and were both settled by April 2016. Again, given the time which had passed since the defaults were applied and settled this wouldn't have been enough to have prompted MoneyBoat to have either declined his application or prompted it to have conducted further checks – such as reviewing his bank statements.

In addition, the credit check results did show that Mr S had an overdraft that he was utilising and at the time the bank was reporting the information to the credit reference agency and Mr S tended to be quite close to his overdraft limit.

But for the reasons I've explained in the provisional decision, a customer using an overdraft isn't solely a reason to uphold the complaint. Especially, when taking account of the overdraft limit compared to the income that Mr S declared that he earned. Just because someone is using their overdraft this doesn't mean that Mr S wasn't in a position to afford to take on their loan.

These defaults and the CCJ coupled with the other information MoneyBoat obtained from Mr S, wouldn't have been sufficient in my view, to have prompted MoneyBoat to have reviewed Mr S's bank statements and so it wouldn't have been aware of what he's told us about his financial situation which was showing he was struggling to meet his existing repayments. In my view, given everything MoneyBoat knew it would've been disproportionate of it to have considered bank statements.

Overall, having considered everything that has been provided by both parties as well as Mr S's recent comments I am still of the view that MoneyBoat carried out proportionate checks before it lent to Mr S which showed it that he would likely be able to afford the loan.

Mr S has provided evidence that a bank has written off a debt that was owed. Of course, any lender or bank is free to write off debt as it sees fit but that doesn't create a precedent that MoneyBoat is bound to follow.

Finally, I've thought about what Mr S has said about MoneyBoat not freezing the interest on the loan after it was approached by a third-party debt advice charity. Mr S raised this point as part of his defence to the CCJ application.

However, as I explained in the provisional decision a court has already looked at this issue which means that it would be inappropriate for our service to consider this aspect of the complaint. This is especially so given we are an alternative to the courts and need to respect findings that the court has made. It is for this reason, that I am not reviewing the help and support MoneyBoat offered (or didn't) up to the point the CCJ was granted.

For the reasons I've outlined above and those in the provisional decision, I've decided that firstly, I can't uphold Mr S's complaint about MoneyBoat's decision to lend. Secondly, I am choosing to dismiss Mr S's complaint about the lack of help and support provided by MoneyBoat as it has already been considered by the courts.

My final decision

For the reasons I've explained above and in the provisional decision, I'm not upholding Mr S's complaint Evergreen Finance London Limited trading as MoneyBoat.co.uk's decision to provide the loan.

I am also dismissing Mr S's complaint about the help and support offered.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 7 June 2024.

Robert Walker
Ombudsman