DRN-5513773

The complaint

Mr S complains that Evergreen Finance London Limited trading as MoneyBoat.co.uk ("MoneyBoat") hasn't correctly updated his credit file after he withdrew from a credit agreement within the 14-day cooling off period. Mr S says the loan shouldn't be on his credit file.

What happened

Mr S was granted one loan from MoneyBoat – he borrowed £400 on 24 June 2023. Mr S was due to make three repayments to MoneyBoat of £149.53 followed by a final payment of £149.50. Mr S notified MoneyBoat he was withdrawing from the credit agreement on 5 July 2023 and he repaid what was owed on 6 July 2023.

Mr S then raised a complaint to MoneyBoat because it had reported the loan to the credit reference agencies (CRA) despite him exercising his right to withdraw from the agreement within 14 days. In Mr S's view, this loan should be removed from his credit file.

MoneyBoat responded to the complaint in June 2024. In this final response letter, it explained there were no negative repercussions for Mr S and so the loan wouldn't be removed from his credit file. Unhappy with this response, Mr S referred the complaint to the Financial Ombudsman.

The complaint was considered by an investigator. She concluded, MoneyBoat had made an error. She said The Consumer Credit Act (S66A (7))) gives Mr S the right to withdraw from the agreement which he had exercised, and so in the circumstances the loan should be removed from his credit file. Mr S also hadn't provided any evidence to show he had been declined a mortgage application as a result of the credit file entry.

MoneyBoat didn't agree saying and across a number of emails said.

- The relevant guidance leaves it down to the lender to decide whether or not to delete the record from the credit reference agencies.
- MoneyBoat wanted guidance on what instances and situations would facilitate a loan being removed from the credit file.
- MoneyBoat accepted that had the loan been taken and withdrawn on the same day then perhaps the removal of the loan from the credit file makes sense.

These points didn't change the investigator's mind and as no agreement has been reached, the case has been passed to me for a 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.

Mr S says as he withdrew from the loan agreement then no information should be reported to the CRAs. Whereas, MoneyBoat says the guidance allows the information to be recorded as long as its not negative and is an accurate reflection of what happened.

I've considered what the Consumer Credit Act says about withdrawing from a credit agreement. Specially section 66A because this is the part where his right to withdraw is enshrined – it says:

> *66A Withdrawal from consumer credit agreement*
>
> *(1)The debtor under a regulated consumer credit agreement, other than an excluded agreement, may withdraw from the agreement, without giving any reason, in accordance with this section.*
> *(2)To withdraw from an agreement under this section the debtor must give oral or written notice of the withdrawal to the creditor before the end of the period of 14 days beginning with the day after the relevant day.*

So clearly, in this case, Mr S was entitled to withdraw from the credit agreement as long as he provided MoneyBoat with notice that he wanted to before the end of the 14 days after the agreement started. In this case, there is no dispute that Mr S notified MoneyBoat that he was withdrawing from his agreement 11 days after the start of the agreement and he settled the balance the day afterwards.

Mr S not only provided notice of his intention to withdraw from the agreement within 14 days he also settled the balance in this time. I'm therefore satisfied Mr S withdrew from the agreement within the required timescales. The Consumer Credit Act goes on to say;

> *(7)Subject as follows, where the debtor withdraws from a regulated consumer credit agreement under this section—*
>
> *(a)the agreement shall be treated as if it had never been entered into…*

I've not included subsection (b) here because it isn't relevant to the outcome of this complaint. However, what subsection (a) shows is that as Mr S withdrew from the credit agreement it should be treated as if he never entered into it. Mr S says this means it shouldn't be reported to the credit reference agencies.

However, while Section 66A does refer to how a withdrawn agreement itself should be regarded, it is silent and doesn't say how such an agreement should be treated for the purposes of credit file reporting.

The only reference to how such agreements should be reported is found in paragraph 11.21 of the Department for Business Innovation & Skills guidance on the implementing *Consumer Credit (EU Directive) Regulations 2010/1010.* The requirement to implement this directive was the reason s 66A came into being. Paragraph 11.21 of the BIS guidance states:

> *"11.21 Section 66A(7)(a) is intended to be binding on the parties to the agreement rather than more generally. CRAs could have regard to section 66A(7)(a) and treat agreements where the borrower has exercised the right of withdrawal as never having existed, removing the agreement from their database. However, they could also record the agreement as having been repaid. The important thing is that the consumer should not be disadvantaged in any way by having withdrawn from and repaid a credit agreement."*

So, the BIS guidance does provide a lender with some discretion on whether and how an a agreement that a customer has withdrawn from should be reported to the CRAs. And it will be down to the particular facts and circumstances of the lending in question in terms of what it would be fair and reasonable for a lender to report to the CRAs in relation to any loan, or loans, that a consumer withdraws from.

As I've explained, Mr S met the prescribed criteria to withdraw from the loan. I can see that he 'withdrew' from and repaid the loan 12 days after he entered into the agreement.

Given this was a first loan, Mr S followed the prescribed criteria for withdrawing from the agreement, the BIS guidance stating that Mr S should not be disadvantaged by having withdrawn from and repaid it and most importantly, at the time at least, there was no indication Mr S was doing anything other than exercising his right to withdraw, I'm satisfied that MoneyBoat should remove all reference of the loan from Mr S's credit file.

In reaching this conclusion, I've kept in mind what MoneyBoat has said about other cases and the approach it should take. It also made reference to another decision it had recently received where the Ombudsman decided it didn't need to remove the loans from the credit file, following withdrawing from the agreement.

I've looked at the copy of the decision provided. And I agree that the ombudsman did state that it wasn't unfair for MoneyBoat to report that the consumer's loans in that case as early settled and was an accurate reflection of what actually happened in the circumstances of MoneyBoat's lending relationship with that customer. But I also can't see that it went as far as saying that it would never be appropriate in any circumstances for a withdrawn loan not to be reported to credit reference agencies.

Furthermore, while I can understand why MoneyBoat might find it strange to have received different outcomes on complaints which it perceives to be materially the same, I am required to consider the facts of a case and reach my own conclusion. I am not bound by the conclusions that another ombudsman has reached on a completely different case.

That said, I do agree that consistency is important and I can understand why MoneyBoat wants clarity about this. I've already explained that the particular facts and circumstances of the lending in question will determine what it would be fair and reasonable for a lender to report to CRA in relation to any loan, or loans, that a consumer withdraws from.

It's also important to note that whether it is appropriate for a lender to report loan or loans that a borrower has withdrawn from will depend on a number of factors. These include but aren't limited to how many loans a consumer applied for and withdrew from, how soon they withdrew from the agreement and how quickly the balance was repaid.

Ultimately, it comes down to whether the consumer had genuinely withdrawn from the agreement – and immediately paying the funds after providing notice tends to support they would – or whether they were, in effect, early settling. In this case, Mr S only ever having a single loan and settling the balance immediately after withdrawing from the agreement, persuades me that this is a case of withdrawal rather than early settlement. And I think that Mr S's credit file should reflect this.

So, while I'm not required to replicate the outcomes reached by other ombudsman, nonetheless I don't consider that it necessarily follows that my answer here is incompatible or inconsistent with the one MoneyBoat received on the other case it has referred to, notwithstanding the differing outcomes.

Finally, I've thought about what Mr S says about this record impacting a mortgage application. As I've previously explained, Mr S's argument that him withdrawing from this agreement automatically means that MoneyBoat shouldn't have reported on it. In any event and notwithstanding this, I've not seen any direct evidence that he was declined a mortgage, or one at a more preferential rate solely because MoneyBoat has reported on a loan which Mr S did apply for and received the funds from. As this is the case, I don't think any further award is warranted.

Putting things right

As I have upheld the complaint, MoneyBoat should delete all reference to the above loan from Mr S's credit file.

My final decision

For the reasons given above, 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 20 June 2025.

Robert Walker
Ombudsman