

The complaint

Mr C complains that Evergreen Finance London Limited, trading as MoneyBoat.co.uk, lent to him irresponsibly.

What happened

Using information from Evergreen, here is a brief table of the two approved loans.

Loan	Date Taken	Date Repaid	Instalments	Amount Borrowed	Highest Repayment
1	16/08/2016	28/04/2017	6	£300.00	£84.89
2	09/05/2017	29/12/2017	3	£200.00	£92.12

One of our adjudicators looked at the complaint and because of the credit history Evergreen had about Mr C he felt that the loans should not have been approved and so he thought that Evergreen should put things right for Mr C in relation to both loans.

Evergreen disagreed. The complaint remained unresolved and was passed to me to decide.

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.

We have set out our general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Evergreen needed to take reasonable steps to ensure that it did not lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr C could repay the loans in a sustainable manner. These checks could include several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure.

In the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate. But certain factors might point to the fact that Evergreen should fairly and reasonably have done more to establish that any lending was sustainable for the consumer.

These factors include:

- 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);

- having many 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);
- 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, but I do not consider this applies to Mr C's circumstances as he took two loans which was not enough to form a pattern.

Evergreen was required to establish whether Mr C could sustainably repay his loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

The loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the Consumer Credit Sourcebook ("CONC") defines 'sustainable' as being the ability to repay without undue difficulties. The customer should be able to make payments on time, while meeting other reasonable commitments, and without having to borrow to meet the repayments.

And it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower will not be able to make their repayments sustainably if they need to borrow further in order to do that. I have carefully considered all the arguments, evidence and information provided in this context and what this all means for Mr C's complaint.

CONC does not stipulate that any potential lender must carry out a credit search with a credit reference agency (CRA). The requirement is to carry out a creditworthiness assessment and the emphasis is that it's from the borrower's perspective, not a risk assessment from the lender's perspective. And where a lender has obtained detailed information about the applicant's credit history, then it is envisaged that this information would form part of that creditworthiness assessment.

In Mr C's situation, Evergreen has sent to us the credit searches it carried out which are clear, easy to read, detailed and done before each loan. The CRA documents Evergreen has sent to us bear dates which coincide with the loan application dates and are contemporaneous documents. I do not agree that Evergreen was not expected to '*review every line*'. These documents are easy to search for specific details and/or are not difficult to review. What would not be appropriate, in my view, would be to obtain them and ignore the contents considering the FCA requirement to carry out a creditworthiness assessment.

Evergreen's argument is that the early loans for a customer are done by way of a procedure which is automated and there is no human involvement. Adding that into my review of this complaint, bearing in mind the basis of it (irresponsible lending), I think that Mr C's CRA information was relevant and important information. So, it being reviewed was a necessary part of the creditworthiness assessment as Evergreen were in possession of it. Evergreen was aware that Mr C had declared to it other expenditure was being spent on credit commitments.

Evergreen has maintained that drilling into the detail on the CRA information was not practical or realistic. But the FRL it sent to Mr C when he complained says the opposite: it relies on having done that to ensure that Mr C could sustainably meet the repayments.

It explained: '*When assessing each individual application we perform a credit check through the credit reference agency [name of CRA here]. The results of this credit check helped to*

satisfy us that you would be able to sustainably meet the repayments due on the loans you were requesting.'

I have reviewed the credit search results Evergreen obtained before approving loan 1. Checking that results document carefully, and mindful of Evergreens points made about the repayment sums, still I total the outstanding loans to be a monthly commitment of around £745. This is far more than the £380 credit commitment figure Mr C declared in his application. If I just utilise the credit search results repayment figure of £745, that would have been enough, in my view, to alert Evergreen to the fact that Mr C had much more debt to furnish that he had declared. And the overall picture is one of a person with a lot of debt and a lot of closed accounts which suggested a continuous need for credit.

Earlier in this decision I've made it clear that Evergreen had a rich seam of information to provide it with Mr C's true financial position. In the circumstances of Mr C's complaint, including the information Evergreen had about him, I uphold his complaint for loans 1 and 2.

Putting things right

In deciding what redress Evergreen should fairly pay in this case I've thought about what might have happened had it not lent to Mr C as I'm satisfied it ought not to have. Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr C 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 Mr C in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr C would more likely than not have taken up any one of these options. So, it wouldn't be fair now to reduce Evergreen's liability in this case for what I'm satisfied it has done wrong and should put right.

Evergreen shouldn't have given Mr C loans 1 and 2.

- Evergreen should add together the total of the repayments made by Mr C towards interest, fees and charges on these loans, including payments made to a third party where applicable, but not including anything Evergreen have already refunded.
- Evergreen should calculate 8% simple interest* on the individual payments made by Mr C which were considered as part of "A", calculated from the date Mr C originally made the payments, to the date the complaint is settled.
- Evergreen should pay Mr C the total of "A" plus "B".

- Evergreen should remove any adverse payment information Evergreen has recorded on Mr C's credit file.

*HM Revenue & Customs requires Evergreen to deduct tax from this interest. It should give Mr C a certificate showing how much tax Evergreen has deducted, if he asks for one.

My final decision

My final decision is that I uphold Mr C's complaint and direct that Evergreen Finance London Limited does as I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 10 September 2021.

Rachael Williams
Ombudsman