

The complaint

Miss W complains Evergreen Finance London Limited trading as MoneyBoat.co.uk ("MoneyBoat") provided her with loans even though she had outstanding payday loans and wasn't working at the time.

What happened

A summary of Miss W's borrowing can be found below.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	largest repayment per loan
1	£400.00	17/10/2021	01/11/2021	4	£142.64
2	£200.00	18/11/2021	31/12/2021	2	£119.47
3	£250.00	28/04/2022	30/06/2022	2	£168.50
4	£250.00	14/07/2022	31/08/2022	2	£152.43
5	£200.00	28/09/2022	31/11/2022	2	£134.80
6	£400.00	02/02/2023	31/03/2023	2	£259.54
7	£350.00	11/04/2023	outstanding	4	£129.03

MoneyBoat considered the complaint about the sale of the loans and concluded it had made a reasonable decision to lend because it had carried out proportionate checks which showed it Miss W could afford them.

However, MoneyBoat noted Miss W was experiencing financial difficulties which led it to say it would reduce the balance due for loan 7 to the capital only – which at the time would've left Miss W with £220.97 to pay. Unhappy with this response, Miss W referred the complaint to the Financial Ombudsman.

The complaint was considered by an investigator, who didn't uphold it about loans 1 - 3. However, she did recommend the complaint be upheld for loans 4 – 7 because by these loans she thought the lending was now harmful for Miss W.

MoneyBoat didn't agree with the investigator's assessment saying by loan 4 there was no evidence of Miss W being reliant on these loans and there was also a gap in lending between Miss W repaying loan 2 and returning for loan 3.

Later, MoneyBoat agreed to make an offer for loans 6 and 7. Based on its calculation this would reduce Miss W's outstanding balance to £101.90 and it also said it would remove these loans from Miss W's credit file.

This offer was put to Miss W and she didn't accept it, instead she asked for an ombudsman's decision. The complaint was then passed to me, and I issued a provisional decision explaining the reasons why I thought loans 3 to 7 should be upheld.

Both parties were asked to provide any further submissions as soon as possible but by no later than 4 January 2024. Miss W emailed to confirm that she accepted the provisional decision on the bases that loans 3 to 7 were upheld.

MoneyBoat responded and said it had nothing further to add.

A copy of 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 W could afford to pay back the amounts 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 W'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 W. These factors include:

- *Miss W 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 W 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 W 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 W. The investigator thought this had been reached in Miss W's complaint by loan 4.

MoneyBoat was required to establish whether Miss W 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 W was able to repay her 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 Miss W's complaint.

I'm sorry to hear about Miss W's mental health and the impact it had on her around the time these loans were granted. I do hope that things have improved for her. I've considered what she told MoneyBoat in her complaint about her health and having done so, in this case, and in relation to the lending decision, I don't think MoneyBoat did anything wrong when it granted the loans.

I say this because, it doesn't look like, based on the information I have to hand that MoneyBoat was aware of Miss W's health until she made her complaint. This means, it couldn't take this into account when deciding whether to lend. This approach is also consistent with the relevant regulations, in the Consumer Credit Sourcebook 2.10.4, it says:

“A firm should assume a customer has mental capacity at the time the decision has to be made, unless the firm knows, or is told by a person it reasonably believes should know, or reasonably suspects, that the customer lacks capacity.”

So, while I have no doubt that the period of time leading up to this loan was challenging for Miss W, I'm unable to say that MoneyBoat needed to do anything differently. This is because it wasn't aware of what was happening, and had happened, in Miss W's life.

In saying that, I've also gone on to consider whether proportionate checks were conducted by MoneyBoat before the loans were approved and as part of this Miss W has provided a 'Debt and Mental Health evidence form' and I've considered this as part of the redress that I think MoneyBoat needs to pay.

Loans 1 and 2

Before these loans were approved, MoneyBoat asked Miss W for details of her income, which she declared as being £1,852 per month for both loans. MoneyBoat says the declared income figure was verified using a credit reference agency.

As part of the applications, Miss W was asked for details of her monthly expenditure, which included details of credit commitments, food, transport and other spending. Miss W declared monthly outgoings of £670 for loan 1 and £623 for loan 2.

Miss W says she wasn't working at the time these loans were approved but that information wasn't reflected in either the information she gave MoneyBoat or the information MoneyBoat could see in its checks. As these were the first loans, I think it was reasonable for MoneyBoat to have relied on what Miss W declared as well as the results of its checks.

As part of the application, MoneyBoat's used information from Miss W's credit search as well as considering averages in the "Common Financial Statement". Following these further checks, MoneyBoat increased Miss W's monthly outgoings by £180 for loan 1 and £227 for loan 2. For both loans this left monthly disposable income of around £1,000 which was more than enough to cover her loan repayments.

MoneyBoat says Miss W declared that she lived at home with parents and so that is why she had minimal monthly repayments towards rent or a mortgage. I agree, with MoneyBoat in so far that this would lead to Miss W having less concerns about paying priority bills such as council tax and so this could leave her with more disposable income. So, I don't think MoneyBoat's reasoning around this point is incorrect.

Before these 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 for each loan.

The credit files showed similar results, which is not surprising given how close together the loans were. MoneyBoat was told that Miss W had 12 active accounts, owing around £12,000. There also wasn't any County Court Judgements recorded or any defaults recorded within the last three years.

MoneyBoat knew of two outstanding longer-term loans that Miss W was paying £404 per month to service and on top of this she had some credit cards and mobile phone accounts to pay as well.

Having reviewed the credit check results, in my view is there isn't anything that would've indicated that Miss W would struggle to repay her loans or that there was anything to suggest that MoneyBoat needed to have carried out further checks such as verifying the information Miss W had provided.

It was reasonable for MoneyBoat to have relied on the information Miss W provided about her income and expenditure which showed she could afford the repayments. There also wasn't anything else to suggest that Mrs S was having either current financial difficulties or

anything to suggest that these loan repayments would be unsustainable for her.

Taking everything into account, I am intending to not uphold Miss W's complaint about loans 1 and 2.

Loan 3

Before loan 3 was advanced there was a period of four months when Miss W wasn't given any loans. While I don't think that gap, overall is enough for MoneyBoat to have broken the lending chain it does show that at least from MoneyBoat's perspective that Miss W didn't have a need for further credit and so perhaps would indicate that the loan was sustainable for her. But I've kept this in mind when thinking about these loans.

The same sort of check was carried out before this loan was advanced as MoneyBoat had carried out before loans 1 and 2. Miss W declared a monthly income of £1,872 and she declared monthly outgoings of £710. MoneyBoat carried out an assessment of her expenditure and it concluded the monthly outgoings figures needed to be increased by a further £212 per month. But this still left £950 per month to afford her repayments.

MoneyBoat also carried out a credit search and the same caveats apply to it as they did for loans 1 and 2. MoneyBoat has also provided the results it has received, and I've considered these to see what MoneyBoat was told about Miss W's other credit commitments.

I've looked at the credit check results, and I do think, it shows a deterioration in Miss W's finances since the turn of the year and since Miss W had repaid loan 2 and I've explained why below.

Firstly, MoneyBoat was told about a number of active loans and credit card accounts. The outstanding loans were projected to cost Miss W £604 per month and on top of this she had credit card balances totalling £4,435 – which would incur a further cost to service.

This is problematic because Miss W declared to MoneyBoat she only had £50 worth of credit commitments each month and while MoneyBoat did increase the expenditure costs by £212, and assuming that was all due to the credit commitments, that still isn't sufficient to cover the costs of just the three loans Miss W already had outstanding and what MoneyBoat knew about.

Secondly, since January 2022 Miss W had been having wider problems managing her money. She had missed the February 2022 payment on an active payday loan – albeit she did bring this account up to date by March 2022.

However, she also had a credit card account that she hadn't made any payments towards for at least four months – this meant the account was now over the prescribed credit limit of £2,000 and was showing as 4 months in arrears by March 2022. She was also having problems managing a current account because her bank was reporting the accounts as being 2 months in arrears in March 2022.

In a space of four months – and since the last loan was repaid, Miss W had three separate accounts enter delinquency with two of the accounts still there, and no sign that her situation was improving in relation to those accounts. This is to me, clear evidence that Miss W was starting to have problems managing her existing credit commitments.

So, I do think, given the credit check results MoneyBoat may have wanted to have made further enquires with Miss W to establish what was leading her to enter arrears on a payday loan, credit card and current account.

MoneyBoat could've gone about doing this a number of ways, it could've asked to see bank statements, or have asked her questions as to why she appeared to be having difficulties managing her existing accounts or any other documentation MoneyBoat felt it needed to obtain.

Miss W has provided copy bank statements from March 2022, and I've looked at these to see what MoneyBoat may have seen had it taken similar action. I can see that Miss W's income was nowhere near the amount that MoneyBoat believed it to be. It does seem that Miss W wasn't working at the time and her sole source of income was benefits and therefore she was receiving around £350 per month.

There are other payments being made into her account, from what I believe is likely to be family members or friends, but even factoring those in, it didn't really cover the costs of just servicing the loans that Miss W had (and what MoneyBoat knew she had) from the credit report.

Given this, I am therefore intending to uphold Miss W's complaint about loan 3 because she couldn't afford the loan repayments.

Loans 4 and 5

MoneyBoat carried out the same sort of checks before these loans were approved as it had done so for the previous loans. The checks MoneyBoat carried out showed it that Miss W had at least £1,025 per month to meet her repayments.

As before, before each loan was carried out a credit search was conducted and MoneyBoat has provided the results that it received and it showed a continuation of the financial difficulties that were present when MoneyBoat reviewed the credit search results in relation to loan 3.

For loan 4, the current account that was in arrears when loan 3 was granted had subsequently defaulted in May 2022. Which shows that Miss W wasn't able to rectify the arrears on the overdraft and so it was in effect called in.

In addition, the payday loan that Miss W had previously had arrears on (but rectified) had gone back into arrears in May 2022. The credit card that was in the early stages of delinquency at loan 3 hadn't been cured, the account had slipped further into arrears and by loan 4 was showing as being six months in arrears and was further above the credit limit. Finally, another credit card had entered delinquency – as Miss W hadn't made any payments for the two months both in April and May 2022.

A similar picture was also apparent when loan 5 was approved. Miss W had continued to have financial difficulties to the extent that accounts continued to be in arrears and new accounts entered delinquency. Indeed, in June 2022 the credit card account that she had been having problems with had been defaulted as well.

To me MoneyBoat ought to have been on notice from the information it had to hand that since January 2022 Miss W had ongoing financial difficulties given the number of accounts it was aware which had entered arrears and had defaulted. In my view it couldn't just ignore these even though Miss W had made her payments to it on time.

It's arguable, that perhaps further checks ought to have been carried out but the arrears and difficulties had now been ongoing for at least 9 months and given what I've seen in the bank statements when loan 3 was advanced I do think the information MoneyBoat received showed that Miss W was clearly having wider financial problems. In the circumstances MoneyBoat ought to have realised that it was unlikely that either of these loans were either affordable or sustainable for her.

I am therefore intending to uphold Miss W's complaint about loans 4 and 5 as well.

Loans 6 – 7

MoneyBoat has made an offer to put things right for Miss W after the investigator reviewed the complaint. The offer that it made, was in line with what the Financial Ombudsman

would've asked MoneyBoat to do if I had decided to uphold these loans.

These loans are no longer in dispute, and I've outlined below what MoneyBoat has already agreed to do to put things right for them.

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 W accepted the provisional decision and MoneyBoat had nothing further to add. So, I see no reason to depart from the findings that I made in the provisional decision. I still think the checks MoneyBoat's checks suggested that Miss W was having wider financial difficulties and she therefore couldn't afford to take on loans 3 – 7.

There was also one contraction in the provisional decision, and I want to clarify to MoneyBoat, as is clear in the redress below, that loan 3 is being upheld for the reasons I gave in the provisional decision.

I've outlined below what MoneyBoat needs to do in order to put things right for Miss W.

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 Miss W at 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 Miss W 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 Miss W 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 W 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 W loans 3 to 7.

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 can't 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 Miss W 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 Miss W which were considered as part of “A”, calculated from the date Miss W 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 7, and treat any repayments made by Miss W as though they had been repayments of the principal. If this results in Miss W 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” can be used to repay any balance remaining on loan 7. If this results in a surplus, then the surplus should be paid to Miss W. However, if there is still an outstanding balance then MoneyBoat should try to agree an affordable repayment plan with Miss W.
- E. MoneyBoat should remove any adverse information recorded on Miss W’s credit file in relation to loans 3 to 5. The overall pattern of Miss W’s borrowing for loans 6 and 7 means any information recorded about them is adverse, so MoneyBoat should remove these loans entirely from Miss W’s credit file. It doesn’t have to remove loan 7 from Miss W’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 Miss W 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 W’s complaint in part.

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

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss W to accept or reject my decision before 1 February 2024.

Robert Walker
Ombudsman