

## **The complaint**

Miss C complains that Evergreen Finance London Limited trading as moneyboat.co.uk ("MoneyBoat") didn't carry out the correct affordability checks at the time the loan was granted. Had it done so, it would've discovered Miss C had rent arrears and therefore it would not have granted the loan.

Miss C also says she wasn't treated fairly when she tried to set up a repayment plan with MoneyBoat and it called and texted her too much about the arrears.

## **What happened**

Miss C was granted one loan of £800 on 21 November 2021. Miss C was due to make five monthly repayments of £257.25 and then a final payment of £257.21. As of January 2023, an outstanding balance remains due, and Miss C is making payments through a repayment plan.

MoneyBoat reviewed Miss C's complaint and didn't uphold it because it said proportionate checks had been carried out and it had tried to assist Miss C in repaying the loan by agreeing to a number of repayment plans. Unhappy with this response, Miss C referred her complaint to the Financial Ombudsman.

An adjudicator then considered the complaint, and in her latest assessment she didn't uphold it. But she did say that MoneyBoat ought to have carried out further checks before granting the loan because the credit check results showed that in the past year three accounts had become delinquent. And the adjudicator reviewed the bank statements provided by Miss C but she thought, had MoneyBoat reviewed them it would've still have decided to have lent.

Miss C didn't agree with the outcome, saying she was behind with a guarantor loan that had a balance of £7,000 and she was only paying £77 per month towards instead of the contracted amount of £219. Miss C also said she been declined a loan from a credit union and she provided a copy of the declined email.

The case was then reviewed by another adjudicator who dealt with Miss C's concerns around the contact she had with MoneyBoat after she missed payments and when she was trying to agree a repayment plan. In the adjudicator's view, the contact was not excessive in nature and it had acted in line with MoneyBoat's terms and conditions.

As no agreement could be reached the case was then passed to me and I issued a provisional decision explaining the reasons why I was intending to uphold Miss C's complaint. Both parties were asked to provide any further submissions as soon as possible, but in any event no later than 3 November 2023.

Miss C responded to say she was in agreement with the provisional decision, and she didn't have anything further to add.

MoneyBoat said it had nothing further to add and would wait for the final decision.

Although the deadline for responses, as laid out in the provisional decision hasn't yet expired, as both parties have now responded agreeing with the provisional decision findings, I see no reason to delay the issuing of the final decision. Both Miss C and MoneyBoat have been informed the case was being preparing for a final 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 Miss C could afford to pay back the amount 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 C'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 C. These factors include:*

- Miss C 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 C 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 C 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 C. The adjudicator didn't consider this applied to Miss C's complaint as there was only one loan and I agree.*

*MoneyBoat was required to establish whether Miss C could sustainably repay the loan – 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 C was able to repay her 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 Miss C's complaint.*

*Before the loan was approved, MoneyBoat asked Miss C for details of her income, which she declared as being £1,350 per month. MoneyBoat says the income figure was checked through a credit reference agency.*

*Miss C also declared monthly outgoings of £750 which included but not limited to a number of other categories such as rent/mortgage payment of £220, £300 for credit commitments and £60 for transport.*

*As part of the application, MoneyBoat used information from its credit search as well as information from the Common Finance Statement. The Common Financial Statement are a*

*list of average amounts that a consumer may have to spend each month for common expenses.*

*Following these two additional checks, it increased Miss C's outgoings by a further £100. This meant for MoneyBoat's affordability assessment it used total monthly outgoings of £850 – which left Miss C with £500 of disposable income each month to afford the repayment of around £258.*

*Before the 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 a credit search, there isn't a regulatory requirement to do one, let alone one to a specific standard. But what MoneyBoat couldn't do is carry out a credit search and then not react to the information it received.*

*And its these credit search results that caused the adjudicator to be sufficiently concerned that she thought MoneyBoat needed to have carried out further checks. Having reviewed those results, I agree with the adjudicator.*

*MoneyBoat knew that Miss C had a number of loans outstanding and given the monthly repayments she was committed to making these were likely either instalment loans or home credit loans – she had five such loans outstanding costing her £170 per month.*

*There were some historic defaults from 2018 and 2019 – five in total. However, Miss C had defaulted on an account in February 2021 which had been in delinquency for some time. The presences of one recent default, on its own, isn't likely to make me think that further checks were needed. But there was other recent and current adverse information that MoneyBoat did need to take into consideration.*

*The first account had entered delinquency in January 2021 – this was a payday loan and Miss C was committed to paying £113 per month – but due to repayment difficulties, she was only making payment of £20 per month. The second account went into delinquency in June 2021 – this was noted as a "Finance House" loan and Miss C ought to have been paying £226 per month – but as with the payday loan account she was on a repayment plan and making payments of £77 per month.*

*So, by the time this loan was granted, Miss C was having financial difficulties to the extent that she needed repayment plans on two loans which ought to have been costing her £339 per month but due to her difficulties, she was in actual fact only paying £99 per month.*

*This was ongoing at the time when MoneyBoat approved the loan, so while I understand what it has said about expecting some adverse information – the fact it was recent and showed that Miss C was having problems managing her existing creditors ought to have prompted some further checks. And these checks needed to be conducted so that MoneyBoat could satisfy itself that Miss C was able to both afford the repayments and that these payments would be sustainable for her.*

*MoneyBoat could've gone about carrying out further checks a number of ways, it could've asked Miss C more information about her creditors, gathered her bank statements, asked for evidence of her outgoings or any other documentation that MoneyBoat may have considered it needed in order to gain a full understanding of Miss C's current financial position.*

*Miss C has provided copies of her bank statement from the month before this loan was approved – October 2021. It would've seen that Miss C's declared income was broadly correct. On top of her living costs that are visible for things such as water, council tax and her Television licence. There are three payments being made to three different debt collection agencies – which I would assume are connected to the accounts that Miss C had defaulted on in 2018/2019.*

*Although, the bank statements on its own, doesn't in my view give an accurate view of Miss C's expenditure – because the payments to loans that we know were on her credit file*

*(and which were being made) aren't all visible.*

*There also, as far as I can see no payment for rent and minimal payments for food. So, in my view the bank statements on their own may not have been sufficient to conclude the loan should not have been granted and therefore that this complaint should be upheld. But taken in conjunction with the credit check results and with what I've explained below overall it should've led MoneyBoat to conclude the loan wasn't sustainable.*

*In addition, as MoneyBoat ought to have had a full understanding of Miss C's circumstances, its likely it would've discovered that in addition to the two repayment plans on the two loans I've mentioned above, Miss C was also in arrears with her rent by nearly £2,000.*

*So, the rent arrears, the arrears on two outstanding loans and what I've seen in the bank statements has led me to believe that Miss C was having current financial difficulties and it wasn't appropriate to advance further lending to her because there was a real risk she wouldn't be able to repay the loan in a sustainable manner.*

*I am therefore upholding Miss C's complaint about MoneyBoat's decision to lend. And I've outlined later in this decision what MoneyBoat needs to do in order to put things right for her.*

### **Debt Collection**

*Miss C has also said that she felt MoneyBoat put her under too much pressure to repay the loan at the monthly contractual rate. And she said she was hounded with text messages and emails even though she had explained that she was struggling.*

*I've thought about what Miss S has said, while considering the notes provided by MoneyBoat which showed each time it contacted her about the debt and having done so, I am intending to not uphold this element of Miss C's complaint.*

*There is a balance to be struck between a lender reasonably following up with its customer about missed and late payments and excessive contact such that the owner of the debt feels that this was too much to bear.*

*But there are regulations around how much contact there can be and I've considered the Financial Conduct Authority Consumer Credit Sourcebook (CONC) – this is the relevant guidance and rules. CONC 7.9.4R says:*

*"A firm must not contact customers at unreasonable times and must pay due regard to the reasonable requests of customers (for example, customers who work in a shift pattern) in respect of when, where and how they may be contacted."*

*I've kept this in mind when thinking about the contact between MoneyBoat and Miss C.*

*From the notes its clear, that Miss C was struggling with the loan repayments from the start and the first plan was put in place at the end of December 2021. And By February 2022, it was clear from the evidence that Miss C provided MoneyBoat that she was having problems paying her council tax and water bill.*

*At times MoneyBoat had attempted to call and speak to Miss C but I don't consider the number of calls, or the time of day that it called to have been unreasonable. After all it was trying to find out what was going on with Miss C's finances.*

*I can also see that a number of repayment plans have been set up and amended at times once MoneyBoat was aware of new information or that the previous plan was too expensive – and I consider this a reasonable course of action.*

*Finally, there are emails between both parties but having read these, it's clear that MoneyBoat contacted Miss C to discuss her finances and to agree the various payment plans that have been put in place. Having looked at the overall contacts between the two*

*parties I don't think they were excessive or unfair. This means I make no award against MoneyBoat in relation to this aspect of the complaint.*

### **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 C agreed with the provisional decision findings and MoneyBoat said it had nothing further to add. I therefore, see no reason to depart from those previously made findings in this final decision. I still don't think MoneyBoat ought to have advanced the loan to Miss C for the same reasons that I gave in the provisional decision.

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

### **Putting things right**

In deciding what redress MoneyBoat should fairly pay in this case, I've thought about what might have happened had it not lent to Miss C, 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 C may have simply left matters there and not attempted to obtain the funds from elsewhere. If this wasn't a viable option, she may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, Miss C 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 she 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 responsible lender would have been able to lend to Miss C in a compliant way at this time.

Having thought about all of these possibilities, I'm not currently persuaded it would be fair or reasonable to conclude that Miss C 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 lent to Miss C and it seems from the statement of account provided by MoneyBoat even after the below redress is calculated an outstanding balance will still likely remain due because Miss C hasn't yet paid MoneyBoat enough to have repaid the capital she initially borrowed.

If MoneyBoat has 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 remove all interest, fees and charges from the balance on the outstanding loan, and treat any repayments made by Miss C as though they had been repayments of the principal. If this results in Miss C having made overpayments then MoneyBoat should refund these overpayments with 8% simple interest, less deductible tax\* calculated from the date the overpayments would have arisen, to the date the complaint is settled.
- B. However, if there is still an outstanding balance then MoneyBoat should try to agree an affordable repayment plan with Miss C and I would remind MoneyBoat of its

obligation to treat Miss C fairly and with forbearance and take account of what it was told in May 2023 about her mental health.

- C. MoneyBoat should remove any adverse information recorded on Miss C's credit file in relation to the loan.

\*HM Revenue & Customs requires MoneyBoat to deduct tax from this interest. MoneyBoat should give Miss C 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 C's complaint in part.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 22 November 2023.

Robert Walker  
**Ombudsman**