

## **The complaint**

Mrs B complains that Evergreen Finance London Limited trading as MoneyBoat.co.uk ("MoneyBoat") hasn't correctly updated her credit file to reflect she repaid her loan after she withdrew from the credit agreement within the 14-day cooling off period. Mrs B says the loan shouldn't be on his credit file.

## **What happened**

In total, Mrs B was granted one loan from MoneyBoat – she borrowed £200 on 7 July 2023. Mrs B was due to make two repayments to MoneyBoat of £128.23. Mrs B notified MoneyBoat she was withdrawing from the credit agreement on 17 July 2023 and she repaid what she owed on 25 July 2023.

Mrs B then raised a complaint to MoneyBoat because it had reported the loan to the credit reference agencies (CRA) even though she withdrew from the credit agreement within the 14-day cooling off period and she repaid the balance within the 30 days allowed. In Mrs B's view, this loan should be removed from her credit file.

MoneyBoat responded to the complaint on 28 July 2023. In this final response letter, it explained under the credit agreement it gave Mrs B the right to withdraw but it didn't need to remove the loan from the CRAs and indeed it will mark the loan as settled.

Unhappy with this response, Mrs B referred the complaint to the Financial Ombudsman.

The complaint was considered by an investigator. She concluded, MoneyBoat hadn't made an error. She said The Consumer Credit Act (S66A (7))) gives Mrs B the right to withdraw from the agreement but it doesn't say anything about how the agreement should be recorded with the CRAs where this happens. Taking account of other available guidance, she was satisfied that the loan agreement didn't need to be removed from the CRAs given the amount of time she spent indebted to MoneyBoat in July 2023.

Mrs B didn't agree saying she has been disadvantaged because there "*was no point*" in her withdrawing from the agreement early. She also said she has been disadvantaged because she was given a payday loan which does affect her credit file. Mrs B asked for the withdrawal in order to get the loan removed from her credit file.

The investigator explained to Mrs B why these points didn't change her mind about the outcome. But, before the complaint was passed for a decision, the investigator approached MoneyBoat to see, as a gesture of goodwill whether it would remove the loan from the CRAs – it declined to do so.

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.

Mrs B says as she withdrew from the loan agreement and no information should be reported to the CRAs. I've thought about this carefully and while I understand Mrs B's frustration, MoneyBoat, in my view hasn't done anything wrong in reporting the loan to the credit reference agencies because as far as I can tell it is reporting accurate information, I've explained why below.

I've considered what the Consumer Credit Act says about cancelling a credit agreement. Specially section 66A because this is the part where Mrs B's 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, Mrs B was entitled to withdraw from the credit agreements by giving MoneyBoat notice by the end of the 14 days allowed. In this case, there is no dispute and as far as I can see Mrs B withdrew from her agreement (by notifying MoneyBoat that she wished to) and she paid the balance that was due within 30 days of notifying MoneyBoat.

I'm therefore satisfied Mrs B 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, and;...*

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 Mrs B withdrew from the credit agreement it should be treated as if she never entered into it. Mrs B says this means it shouldn't be reported to the credit reference agencies.

Mrs B only had to pay interest at a daily rate for the period that she had the funds. This is in accordance with the withdrawal provisions. There was no additional interest added to account for the fact that Mrs B paid early, as would have happened if Mrs B's payment had been treated as an early settlement according to those provisions. So, I'm satisfied, at least in terms of the amount Mrs B was required to repay, the agreement was treated as withdrawn.

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 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.”*

Clearly, from the guidance there are situations where it could be appropriate for a lender to remove the withdrawn loan from a borrower's credit file. However, in this case I don't think it would be the fair or reasonable thing for me to direct MoneyBoat to cease reporting on Mrs B's loan in this instance.

I say this because Mrs B took a loan and withdrew from it 10 days later. It then, took a further eight days before Mrs B repaid this loan. So, in total, Mrs B spent 18 days out of a 24 day period in the month of July 2023 indebted to MoneyBoat. In these circumstances, it wasn't a case of Mrs B taking out a loan and then deciding to withdraw from it because it was no longer needed. In this case it seems to me that perhaps Mrs B had already spent the funds that she borrowed and then separately obtained the funds – perhaps after being paid or from borrowing funds from elsewhere – in order to settle the balance early. As this is the case, I don't think that it is unfair for MoneyBoat to reflect this in what it reports to credit reference agencies.

However, an error may have been made, if what MoneyBoat is reporting to the credit reference agencies wasn't an accurate reflection of the conduct of the account. Mrs B hasn't provided a copy of her credit file, so I don't know what MoneyBoat is reporting. But I would assume that if there was any incorrect information - such as late payments rather than the existence and repayment of the loan being reported - Mrs B would've raised that by now.

Bearing in mind the particular circumstances here, I don't think that what MoneyBoat is reporting is a misrepresentation of what happened here. Therefore, I don't think that MoneyBoat has acted unfairly and I'm not upholding Mrs B's complaint.

I appreciate Mrs B will be disappointed with this outcome, but I hope my explanation has provided useful as to why I am not upholding her complaint.

### **My final decision**

For the reasons given above, I'm not upholding Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 21 February 2024.

Robert Walker  
**Ombudsman**