DRN-4934356

Financial Ombudsman Service

The complaint

Mr B complains through a representative that Evergreen Finance London Limited trading as MoneyBoat.co.uk ("MoneyBoat") provided him with a loan without carrying out sufficient affordability checks.

What happened

Mr B took one instalment loan of £600 on 7 July 2023. Mr B was due to make five monthly repayments of £178.64 followed by a final payment of £178.56. Mr B has had some problems repaying his loan and as of April 2024 an outstanding balance remained due.

MoneyBoat considered Mr B's complaint and didn't uphold it because the checks its conducted showed the loan to be affordable. Unhappy with this response, Mr B's representative referred the complaint to the Financial Ombudsman.

The complaint was considered by an investigator, who upheld the complaint because there was recent adverse payment information which suggested Mr B was struggling to pay his existing creditors.

MoneyBoat didn't agree with the investigator's assessment saying that while the delinquency marker is a sign of financial difficulties, it wasn't enough to conclude the loan was unaffordable. It said that it perhaps ought to have carried out further checks.

As no agreement could be reached the case has been passed 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.

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 Mr B could afford to pay back the amount he'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 Mr B'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 Mr B. These factors include:

- Mr B 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);

- Mr B 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);
- Mr B 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 Mr B. The investigator didn't consider this applied to Mr B's complaint and I would agree because only one loan was granted.

MoneyBoat was required to establish whether Mr B could *sustainably* repay the loan – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr B was able to repay his 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 Mr B's complaint.

Mr B declared a monthly income of £1,710. MoneyBoat says the income figure was checked using a tool provided by a credit reference agency, so it concluded that Mr B's income was accurate.

Mr B also provided details of his monthly expenditure, and he declared that his outgoings were £670. MoneyBoat carried out an assessment of his expenditure using his credit check results and / or to bring Mr B's outgoings in line with the common financial statement. MoneyBoat concluded, that Mr B's outgoings needed to be increased by a further £216 – so for the affordable assessment it used a monthly outgoing of £886. Based, solely on the income and expenditure checks Mr B could afford to repay his loans.

MoneyBoat also carried out a credit search and it has provided the results it received from the credit reference agency. I've therefore considered these because the results were in the investigator's view sufficiently concerning that ought to have led MoneyBoat not to have lent to Mr B.

Looking at the credit search results they are, as the investigator pointed out, concerning. MoneyBoat was on notice that Mr B had defaulted on a credit card account in March 2023, and the records show that in the months leading up to the default Mr B hadn't been making payments to it. This is so close enough to the loan start date that MoneyBoat ought to have considered whether Mr B was experiencing ongoing financial difficulties.

The rest of the credit search results do suggest that he was having wider financial difficulties. Mr B had a loan account that he had an arrangement pay on and had been subject to that arrangement since January 2023. He also had an account enter delinquency in May 2023 – so only 6 weeks or before this loan was approved and again, Mr B had appeared to have had payment problems on the delinquent account since February 2023.

Finally, there were two other accounts where Mr B had entered into arrears and although he had then subsequently corrected the arrears – given the rest of the adverse information that was being reported I do think this is further evidence that he was struggling to keep on top of his existing credit repayments.

MoneyBoat has argued that perhaps this ought to have led to further checks. But I disagree. There will be some situations where seeing some recent payment information ought to have prompted a more thorough investigation into a customer's finances.

But in the individual circumstances of this complaint, I'm satisfied that the number of accounts Mr B was having problems repaying and the closeness of the adverse information to the date of the loan can't be ignored. And ought to have led MoneyBoat to conclude that Mr B was unlikely to be able to repay this loan in a sustainable manner given he was already having problems managing his existing debts.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, I'm satisfied the redress I have directed above results in fair compensation for Mr B in the circumstances of his complaint. I'm satisfied, based on what I've seen, that no additional award would be appropriate in this case.

MoneyBoat ought not to have granted the loan to Mr B and I've set out below what MoneyBoat needs to do in order to put things right for him.

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 Mr B, 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 Mr B 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 B 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 Mr B 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 Mr B.

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 then remove all interest, fees and charges from the balance of the loan, and treat any repayments made by Mr B as though they had been repayments of the principal. If this results in Mr B 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.
B. However, if there is still an outstanding balance then MoneyBoat should try to agree an affordable repayment plan with Mr B.
C. MoneyBoat should remove any adverse information recorded on Mr B's credit file in relation to the loan.

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

My final decision

For the reasons I've explained above, I'm upholding Mr B's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 12 September 2024.

Robert Walker
Ombudsman