DRN-1224021

The complaint

Mr W complains that Elevate Credit International Limited (trading as 'Sunny') acted irresponsibly when lending to him.

What happened

Over the course of a month or so between September and October 2018 Sunny provided Mr W with 4 instalment loans. When they were arranged, all these loans were originally due to be repaid by six monthly repayments.

Here's a table setting out details of those loans:

loan	date taken	date repaid	instalments	amount	combined repayment*
1	10/09/2018	05/10/2018	6	£400.00	£102.57
2	30/09/2018	05/10/2018	6	£100.00	£129.71
3	12/10/2018	18/04/2019	6	£100.00	£33.35
4	12/10/2018	outstanding	6	£350.00	£150.02

**this is the highest total monthly repayment required including where loans overlap*

Mr W feels that Sunny didn't do proper checks and so failed to identify that he was using these payday loans to fund his gambling habit. Mr W says that because Sunny gave him unaffordable loans this caused his debt to spiral out of control and affected his mental health.

Our adjudicator partly upheld Mr W's complaint. She didn't think she'd seen enough to say that loans 1-3 shouldn't have been lent. But she felt that by loan 4 proportionate checks would most likely have shown Mr W was having problems managing his money and spending a large proportion of his income on online betting sites. So our adjudicator said Sunny shouldn't have provided loan 4 and she gave detailed directions setting out what she thought Sunny should do to put things right for Mr W.

Sunny disagreed. It mainly said that it conducted robust affordability and creditworthiness checks for each and every loan and deems those checks proportionate to ensure its loans are affordable and sustainable for customers.

So the complaint comes 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've set out our general approach to complaints about short-term lending - including all of the relevant rules, guidance and good industry practice - on our website.

Sunny needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should've carried out proportionate checks to make sure Mr W could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. With this in mind, 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 Sunny should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a customer's 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 *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

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

Of course 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 relevant regulations define sustainable as being without undue difficulties. And in particular, the customer should be able to make repayments on time, while meeting other reasonable commitments - as well as 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 won't be able to make their repayments sustainably if they're unlikely to be able to make their repayments without borrowing further.

Taking all this into account, I've carefully considered all of the arguments, evidence and information provided and thought about what this all means for Mr W's complaint.

Sunny has told us about the checks it did before lending to Mr W. It asked him to provide details of his income and to tell Sunny what he normally spent each month. And Sunny also carried out checks on Mr W's credit file.

I agree with the adjudicator that looking at the information Mr W told Sunny about his income and outgoings and what Sunny had recorded about his financial situation, it wasn't wrong for Sunny to give him loans 1, 2 and 3. These loans all *looked* comfortably affordable for Mr W, based on what he'd said to Sunny about his finances - even taking into account the combined monthly repayments when loans overlapped.

It was early in the lending relationship and so I think the checks it did were enough for Sunny to agree to lend. As Mr W hasn't raised any objection to the adjudicator's recommendation in relation to these first three loans, I don't think that I need to say more about them.

Like our adjudicator, I don't agree it was reasonable for Sunny to provide loan 4.

Looking at Mr W's borrowing pattern I can see that it looks like he took out loan 4 on the same day as loan 3 – and both these loans started just a week after he'd repaid his first two Sunny loans. Loan 4 was for a significant amount. So although the loan looked comfortably affordable on the figures Mr W gave (even on top of paying loan 3), I think his borrowing history should've prompted Sunny to carry out more thorough checks into his financial situation before agreeing to lend further.

I don't think just asking Mr W about his other short term loans would've been enough in these circumstances – although had it done so Sunny would've likely found out that Mr W had been relying on other short term loans – he'd repaid two just the week before taking out loan 4 and he was still paying another outstanding short term loan with a different lender. He'd arranged that loan over 12 months - possibly to keep down the cost of each monthly repayment. And he'd only started that loan the month before taking out loan 4 with Sunny – so it had a year or so to run.

I think at this point Sunny should have taken steps to verify what Mr W was saying about his financial circumstances as they appeared at odds with his borrowing pattern. Sunny hasn't shown me it did this. So I can't fairly say that it carried out a proportionate check before agreeing loan 4.

Mr W has provided his bank statements so I've looked through these to see what Sunny was likely to have found out. To be clear, I'm not suggesting the lender should have done this. But, in the absence of other evidence, I think these give a reasonable picture of Mr W's finances at the time. And had Sunny looked in depth at Mr W's finances it would likely have seen that he was facing serious problems managing his money. I think it would have learnt that Mr W was regularly spending significant amounts on what appear to be gambling transactions. And it would have seen that it looked like he had used some of the money he'd previously borrowed from Sunny to repay other short term loans that were due.

This means I don't think it was reasonable for Sunny to think that it was likely Mr W would be able sustainably to repay loan 4 – so it shouldn't have provided this loan.

Putting things right – what Sunny needs to do

I'm upholding the complaint about loan 4 and Sunny should put things right.

When he complained to us Mr W hadn't repaid loan 4 – I don't know if that's still the case so I've drafted the following directions accordingly.

If Sunny has sold outstanding debt it should buy it back before doing what I have outlined below. If Sunny isn't able to buy the debt back then it should liaise with the new debt owner to achieve the following:

A. Add together the total of the repayments made by Mr W towards interest, fees and charges on all upheld loans *without an outstanding balance*, not including anything it has already refunded.
B. Calculate 8% simple interest* on the individual payments made by Mr W which were considered as part of "A", calculated from the date Mr W originally made the payments, to the date the complaint is settled.
C. Remove all interest, fees and charges from the balance on *any upheld outstanding loans,* and treat any repayments made by Mr W as though they had been repayments of the principal. If this results in Mr W having made overpayments then these should be refunded with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Sunny 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" should be used to repay any balance remaining on outstanding loans. If this results in a surplus then the surplus should be paid to Mr W. However if there is still an outstanding balance then Sunny should try to agree an affordable repayment plan with Mr W.
E. Remove all adverse entries from Mr W's credit file for loan 4.

*HM Revenue & Customs requires Sunny to take off tax from this interest. Sunny must give Mr W a certificate showing how much tax it's taken off if he asks for one.

My final decision

For the reasons given above, I'm upholding Mr W's complaint about loan 4. Elevate Credit International Limited (trading as 'Sunny') should take the steps I've set out to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 4 May 2020.

Susan Webb
Ombudsman