

The complaint

Mr B says Elevate Credit International Limited, trading as Sunny ("Sunny"), irresponsibly lent to him. Mr B has told us he had a gambling problem which caused him to get into a cycle of debt.

What happened

This complaint is about ten short-term loans Sunny provided to Mr B between December 2017 to November 2018. Mr B's borrowing history is as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount
1	16/12/2017	17/05/2018	6	£500.00
2	10/02/2018	17/05/2018	6	£200.00
3	27/04/2018	17/05/2018	6	£350.00
4	22/06/2018	10/08/2018	6	£550.00
5	22/06/2018	05/10/2018	6	£50.00
6	13/10/2018	02/11/2018	6	£150.00
7	13/10/2018	30/11/2018	6	£100.00
8	13/10/2018	30/11/2018	6	£150.00
9	13/10/2018	28/12/2018	6	£200.00
10	09/11/2018	28/12/2018	6	£200.00

Our adjudicator partially upheld Mr B's complaint and thought the loans from loan five onwards shouldn't have been given. The adjudicator thought that if Sunny had carried out further checks about Mr B's financial position it would have seen that he was struggling to manage his money.

Sunny disagreed but did offer to uphold the complaint from loan nine onwards. We put the offer to Mr B but didn't hear back from him.

As the complaint remains unresolved, it has been passed to me to decide in my role as ombudsman.

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 have carried out proportionate checks to make sure Mr B 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 consumer'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.

I think that it is important for me to start by saying that Sunny was required to establish whether Mr B 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.

Mr B didn't comment on the adjudicator's opinion that loans one to four shouldn't be upheld. Because of this, I don't think there is any ongoing disagreement about these loans. So, I won't be making a decision about this lending. But the loans were part of the borrowing relationship Mr B had with Sunny. So, it is something I will take into account when considering the other loans he took.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Mr B's complaint. After doing so, I've decided to partially uphold Mr B's complaint. I'll explain why.

I agree with the adjudicator that Mr B's borrowing behaviour would suggest he was having problems managing his finances and I think that when he returned for further credit at loan five, Sunny should have done more to build up a bigger picture of his financial circumstances.

When Mr B took loan three, he still had loans one and two outstanding. Sunny has told us that it allows for more than one loan to be taken at a time which offers its customers flexibility in managing their finances. But I think it can equally be an indication that a person is struggling to manage their money. At loan three Mr B's debt to Sunny had increased from the initial borrowing of £500 up to a total of £1,050 within four months.

Mr B then repaid all of that borrowing on 17 May but returned a month later to take loans four and five on the same day. This would suggest that whatever the circumstances that had caused Mr B to take high cost credit in the first instance hadn't been resolved. So, I think Sunny should have done more to establish what Mr B's financial position was at loan five.

And Mr B was repaying his loans earlier than the agreed term dates. While I accept this would have saved Mr B interest charges, I also think that it can be an indication that a person is having problems managing their money and may be juggling their finances in order to make ends meet.

If Sunny had carried proportionate checks at the time Mr B applied for loan five, it would have seen that Mr B was spending a significant proportion of his income on on-line gambling websites and was clearly having problems because of that.

I've also looked at the overall pattern of Sunny's lending history with Mr B, with a view to seeing if there was a point at which Sunny should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Sunny should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mr B's case, I think that this point was reached by loan seven. I say this because:

- At this point Sunny ought to have realised Mr B was not managing to repay his loans sustainably. Mr B had taken out seven loans within ten months. So Sunny ought to have realised it was more likely than not Mr B was having to borrow further to cover the hole repaying his previous loan was leaving in his finances and that Mr B's indebtedness was increasing unsustainably.
- Mr B's first loan was for £500 and the total he borrowed at loan seven (he took four loans on the same day) was for £600. At this point Sunny ought to have known that Mr B was not likely borrowing to meet a temporary shortfall in his income but to meet an ongoing need which in Mr B's case was to finance his gambling habit.
- Mr B wasn't making any real inroads to the amount he owed Sunny. Loan ten was taken out 11 months after Mr B's first. Mr B had paid large amounts of interest to, in effect, service a debt to Sunny over an extended period.

I think that Mr B lost out because Sunny continued to provide borrowing from loan seven onwards because:

- these loans had the effect of unfairly prolonging Mr B's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.
- the number of loans which Mr B borrowed was likely to have had negative implications on Mr B's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So, like the adjudicator, I'm also upholding the complaint about five to ten and Sunny should put things right.

Putting things right

- refund all interest and charges Mr B paid on loans five to ten;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement†;
- remove any negative information about loans five and six from Mr B's credit file;
- the number of loans taken from loan seven onwards means any information recorded about them is adverse. So, all entries about loans seven to ten should be removed from Mr B's credit file.

† HM Revenue & Customs requires Sunny to take off tax from this interest. Sunny must give Mr B 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 partially upholding Mr B's complaint. Elevate Credit International Limited should put things right as set out above.

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

Catherine Langley
Ombudsman