DRN-1556478

The complaint

Mr C says Elevate Credit International Limited, trading as Sunny ("Sunny"), irresponsibly lent to him. Mr C has said he got into a cycle of debt leading to repeat borrowing which worsened his already poor financial situation.

What happened

This complaint is about 23 short-term loans Sunny provided to Mr C between

September 2016 to May 2019 Mr C's borrowing history is as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount
1	09/09/2016	16/11/2016	14	£1,000.00
2	26/01/2017	09/02/2017	14	£100.00
3	14/02/2017	09/06/2017	14	£300.00
4	24/02/2017	09/06/2017	14	£300.00
5	07/03/2017	09/06/2017	14	£200.00
6	14/03/2017	09/06/2017	14	£200.00
7	04/08/2017	24/10/2017	14	£500.00
8	12/08/2017	11/09/2018	14	£300.00
9	17/08/2017	31/08/2018	14	£200.00
10	19/12/2017	11/09/2018	14	£200.00
11	23/05/2018	31/08/2018	14	£100.00
12	11/09/2018	15/12/2018	14	£700.00
13	25/10/2018	15/12/2018	14	£200.00
14	09/11/2018	15/12/2018	14	£100.00

15	30/11/2018	15/12/2018	14	£100.00
16	02/01/2019	14/03/2019	14	£500.00
17	19/02/2019	14/03/2019	14	£300.00
18	21/02/2019	14/03/2019	14	£200.00
19	21/03/2019	18/07/2019	14	£200.00
20	28/03/2019	02/05/2019	14	£50.00
21	11/04/2019	Loan Still Outstanding	14	£300.00
22	20/04/2019	18/07/2019	14	£100.00
23	10/05/2019	Loan Still Outstanding	14	£300.00

Our adjudicator upheld Mr C's complaint and thought that none of the loans should have been give because if Sunny had carried out proportionate checks, it would have seen that

Mr C spent a significant amount of his income on on-line gambling so it was unlikely he would be able to repay the loans sustainably.

Sunny disagreed but did offer to uphold the complaint from loan 12 onwards but Mr C didn't accept the offer.

Sunny also said there were gaps in the lending between loans one and two, loans six and seven and loans nine and ten.

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 C 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 C 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.

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

In its response to the adjudicator, Sunny has said there were gaps in the lending. This would mean that effectively the borrowing relationship would re-start afresh after any gap and less checks would again be proportionate. But I don't think the length of time between loans one and two, six and seven and nine and ten (between two and four months) was significant enough for Sunny to have assumed that Mr C had overcome whatever the financial problem was that caused him to take short-term credit in the first instance.

Sunny has told us that at the outset of the borrowing relationship it asked Mr C for details of his income and expenditure, other short-term lending commitments and carried out a credit search. But given the length of the term of the first loan and the amount Mr C was borrowing, I think Sunny should have been verifying what Mr C was telling it. This could have been done by asking for evidence of what he had told Sunny – such as copies of pay slips, bank statements etc.

And, as our adjudicator explained, a proportionate check at the outset of the borrowing relationship Mr C had with Sunny would most likely have shown that Mr C was a frequent user of gambling websites. It also would have been clear that Mr C was repaying existing borrowing with other short-term credit providers which would have sign posted that Mr C wasn't managing his personal finances well. And I note – as examples – that in the two months prior to his initial borrowing with Sunny when Mr C's bank account went into an overdrawn position, he took further short-term lending with other providers. So, Mr C was already struggling with his finances.

I've also looked at the overall pattern of Sunny's lending history with Mr C, 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 C's case, I think that this point was reached by loan six. I say this because:

- At this point Sunny ought to have realised Mr C was not managing to repay his loans sustainably. Mr C had taken out six loans within six months. So Sunny ought to have realised it was more likely than not Mr C was having to borrow further to cover the hole repaying his previous loan was leaving in his finances and that Mr C's indebtedness was increasing unsustainably.
- Mr C was repaying his loans before the agreed term. While this would have saved Mr C charges in interest, it can also be a sign of someone struggling to manage their finances. I say this because Mr C would return for further borrowing. And given the nature of short-term lending I would question why someone would repay one loan only to replace it with another.
- Mr C wasn't making any real inroads to the amount he owed Sunny. Loan 23 was taken out over two and a half years after Mr C's first. Mr C had paid large amounts of interest to, in effect, service a debt to Sunny over an extended period.

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

- these loans had the effect of unfairly prolonging Mr C's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.
- the number of loans and the length of time over which Mr C borrowed was likely to have had negative implications on Mr C'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 in full and Sunny should put things right.

Putting things right

If the outstanding balance due on Mr C's loans has been transferred to a third party Sunny should buy the loans back if it can. If Sunny can't buy the loans back, then it needs to work with the third party to make sure the following is achieved:

A) Add together the total of the repayments made by Mr C towards interest, fees and charges on all upheld loans without an outstanding balance.

B) Calculate 8% simple interest* on the individual payments made by Mr C which were considered as part of "A", calculated from the date Mr C 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 C as though they had been repayments of the principal on all outstanding loans.

If this results in Mr C having made overpayments then Sunny 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.

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 C. However, if there is still an outstanding balance then Sunny should try to agree an affordable repayment plan with Mr C.

E) Remove any adverse information recorded on Mr C’s credit file in relation to loans one to five.

The number of loans taken from loan six onwards means any information recorded about them is adverse. So, all entries about loan six onwards should be removed from Mr C’s credit file. Sunny does not have to remove the outstanding loans from

Mr C’s credit file until these have been repaid, but any adverse information recorded about these loans should still be removed.

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

If after doing the above Mr C still has an outstanding balance due, then Sunny should try and work together to come to a mutually agreeable repayment plan with Mr C in order to repay what is owed. But I’d remind Sunny of its obligation to treat Mr C fairly.

My final decision

For the reasons given above, I’m upholding Mr C’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 C to accept or reject my decision before 4 June 2020.

Catherine Langley
Ombudsman