

## The complaint

Mr G complains that Elevate Credit International Limited (trading as Sunny) lent irresponsibly to him.

## Background

Between June 2017 and April 2018, Mr G borrowed seven loans from Sunny. His borrowing history is set out below.

Loan No	Date Taken	Date closed	Amount taken	No of Instalments
1	12/06/2017	15/08/2017	100	6
2	28/06/2017	15/12/2017	100	6
3	06/09/2017	15/09/2017	100	6
4	12/09/2017	13/10/2017	50	6
5	26/09/2017	15/11/2017	200	6
6	18/12/2017	15/02/2018	400	6
7	10/04/2018	18/04/2018	350	6

Our adjudicator thought the complaint should be upheld in respect of all seven loans. For loans 1 to 5, she thought that Sunny should have realised that Mr G's disposable income was so limited that he couldn't sustainably repay his loans. In respect of loans 6 and 7, she thought the pattern of Mr G's borrowing was otherwise harmful.

Sunny didn't agree with our adjudicator's view. So the matter has been passed to me to make a final decision.

## My findings

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 G 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 Mr G 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 G 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 G's complaint.

I can see that when Mr G applied for loan 1, Sunny asked him about his income and expenditure. From the information that was provided and before his potential repayments to Sunny were taken into account, Mr G's disposable income was said to be £90. When his repayments for loan 1 were taken into account, his spare money at the end of each month was less than £60.

I agree with our adjudicator that over the intended six month repayment period, it seems unlikely to me that Mr G would have been able to make his repayments without having to borrow further. For the same reasons, although I appreciate the figures vary a little, I don't think he'd have been able to sustain his repayments in respect of loans 2 to 5.

I've also looked at the overall pattern of the lending history 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. If that were so, Sunny should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mr G's case, I agree with our adjudicator that this point was reached by loan 6. I say this because:

- At this point Sunny ought to have realised Mr G was not managing to repay his loans sustainably. He had taken six loans out in six months. So Sunny ought to have realised it was more likely than not that Mr G was having to borrow further to cover the hole repaying his previous loan was leaving in his finances and that his indebtedness was increasing unsustainably.
- Mr G's first loan was for £100 and loan 6 was for £400. At this point Sunny ought to have known that Mr G was not likely borrowing to meet a temporary shortfall in his income but to meet an ongoing need.
- Mr G wasn't making any real inroads to the amount he owed Sunny. Loan 6 was taken out six months after the first. And it was for a significantly larger amount. Mr G had paid large amounts of interest to, in effect, service a debt to Sunny over an extended period.

I think that Mr G lost out because Sunny continued to provide borrowing from loan 6 onwards because:

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

So I'm upholding the complaint and Sunny will need to take action to put things right.

### **Putting things right**

Sunny must:

- refund all interest and charges Mr G paid on loans 1 to 7
- 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 1 to 5 from Mr G's credit file;
- the number of loans taken from loan 6 onwards means any information recorded about them is adverse. So all entries about loans 6 and 7 should be removed from Mr G's credit file.

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

### **My final decision**

I uphold this complaint about Elevate Credit International Limited and require it to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 25 July 2020.

Nicola Bowes  
**Ombudsman**