

The complaint

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

What happened

Mr C took 37 instalment loans between March 2017 and March 2019. I've included some of the information we've received about these loans below.

Loan Number	Loan Amount	Received Date	Actual Repayment Date
1	£250	23/03/2017	27/04/2017
2	£50	05/04/2017	11/04/2017
3	£250	29/04/2017	20/07/2017
4	£50	03/06/2017	20/07/2017
5	£250	22/07/2017	26/07/2017
6	£250	29/07/2017	11/08/2017
7	£250	16/08/2017	01/09/2017
8	£50	29/08/2017	01/09/2017
9	£250	02/09/2017	07/11/2017
10	£50	22/10/2017	24/10/2017
11	£50	25/10/2017	27/10/2017
12	£50	29/10/2017	07/11/2017
13	£150	12/11/2017	17/11/2017
14	£100	16/11/2017	16/11/2017
15	£250	23/11/2017	22/02/2018
16	£50	08/02/2018	13/02/2018

17	£50	16/02/2018	22/02/2018
18	£250	22/02/2018	11/04/2018
19	£50	13/03/2018	28/03/2018
20	£250	18/04/2018	19/04/2018
21	£250	21/04/2018	03/07/2018
22	£50	26/05/2018	29/05/2018
23	£50	30/05/2018	31/05/2018
24	£50	31/05/2018	14/06/2018
25	£100	28/06/2018	03/07/2018
26	£250	03/07/2018	06/11/2018
27	£100	27/09/2018	04/11/2018
28	£50	28/10/2018	04/11/2018
29	£200	06/11/2018	13/02/2019
30	£100	16/11/2018	19/02/2019
31	£150	19/02/2019	05/03/2019
32	£100	20/02/2019	21/02/2019
33	£100	21/02/2019	26/02/2019
34	£150	28/02/2019	09/05/2019
35	£50	08/03/2019	12/03/2019
36	£50	09/03/2019	09/05/2019
37	£100	12/03/2019	09/05/2019

Sunny considered Mr C's complaint and accepted that something may have gone wrong when it provided loans 21 to 37. And it has already refunded interest on these loans and cleared the outstanding balance for loans to 34, 36 and 37. I understand loans 21 to 37 have also been removed from Mr C's credit file. Initially Mr C accepted the offer but withdrew the acceptance before the refund was completed. But Sunny completed the refund and referred Mr C to this Service to consider the remaining loans.

Our adjudicator didn't think it was wrong to have granted the first five instalment loans. But she thought the remaining instalment loans in dispute (loans 6 to 20) shouldn't have been given.

Mr C appears to agree with the adjudicator's view but Sunny disagreed. Sunny says that

Mr C may have taken out loans within a short space of time because it was a more manageable way of dealing with his finances – rather than because he was having problems managing his money as the adjudicator suggested. Sunny though did agree that loans 15 to 20 shouldn't have been lent.

Sunny's offer for loans 15 to 20 is in line with the adjudicator's recommendation that it should refund interest paid on these loans together with 8% simple interest. And it has agreed to remove these loans from Mr C's credit file. Mr C wasn't happy with this offer because it wasn't in line with what the adjudicator recommended.

As no agreement has been reached, the case has been passed to me for a final decision on the remaining loans in dispute, 6 to 14.

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.

For the lending that remains in dispute, Sunny had to assess if Mr C could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Sunny'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 C'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 Sunny should have done more to establish that any lending was sustainable for Mr C. These factors include:

- Mr C 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 C 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 C 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 C.

Sunny was required to establish whether Mr C could *sustainably* repay his instalment loans – 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 C was able to repay his loans sustainably. But it doesn't automatically follow that this is the case. The Financial Conduct Authority (the industry regulatory) says in the Consumer Credit

Sourcebook (“CONC”) that payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won’t be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I’ve considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr C’s complaint.

loans 6 to 12

As our adjudicator explained, by loan 6 Sunny should reasonably have known that it’s likely that Mr C was struggling to repay his loans in a sustainable way. This is because loan 3 was taken out two days after repayment of loan 1; loan 5 was taken out two days after repayment of loans 3 and 4; and loan 6 was taken out three days after loan 5 was repaid. And each of these new loans was taken out for the same amount, or around that, of the repaid loan(s).

So, I think the way Mr C was taking these loans meant that Sunny shouldn’t have given loan 6 or subsequent loans. I also think if Sunny had carried out proportionate checks for loan 6, from what I can see, these would’ve revealed that Mr C was also borrowing from other short term and high cost lenders around this time – a further indication that Mr C was most likely struggling to manage his finances before this loan was given.

In these circumstances, there was a significant risk that Mr C wouldn’t be able to repay loan 6, or any later loans, without undue difficulty.

Sunny feels Mr C may have arranged his finances in this way as it may have been more manageable than taking out one larger loan. It seems unlikely to me that a consumer would spread their need for a solution to a short-term gap in their finances through several loans with gaps between them. A loan is usually taken out for the amount a consumer needs at that time, rather than staggering their financial shortfall over a few months.

I can also see that when Sunny gave the first five loans Mr C’s income was relatively low, so he appeared to have less scope to deal with shortfalls in his finances. I think it’s more likely than not that the very short gap between loans 1, 3, 4 and 5 being repaid and further loans being taken out, was an indication that Mr C needed to borrow again to fill a gap in his finances.

loans 13 to 20

Having looked at the overall pattern of Sunny’s lending history with Mr C, I agree with our adjudicator that Sunny should reasonably have seen that further lending was unsustainable, or otherwise harmful, at the time it provided loan 13. I say this because:

- By loan 13 it was almost eight months into the lending relationship with no significant breaks between loans. Some of the loans overlapped. In my view, Mr C’s loan history up until this point was a clear indication that his underlying financial situation didn’t seem to be improving;
- Mr C took some loans shortly after having repaid previous ones. As well as loans 3, 5 and 6, loans 7, 9, 11, 12 and 13 were all taken out shortly after repayment of previous lending.

So Sunny ought to have realised it was more likely than not Mr C, on these occasions, was having to borrow further to cover the hole the repayment of the previous loans had left in his finances, and that this was indicative of his indebtedness not being sustainable;

- The loans show a broadly similar pattern of borrowing. All loans ranged between £50 to £250. I think it's most likely this consistent pattern of borrowing over the period showed that Mr C didn't just have a short-term cash-flow problem but was probably supporting regular living expenses or other financial commitments;
- Mr C's lending history was prolonged with loans continuing to be taken shortly after repayment of previous lending through to March 2019. Mr C borrowed for a period of two years without any breaks. The amount of time that Mr C spent indebted to Sunny meant that he was servicing a debt to Sunny over an extended period.

I think that Mr C lost out when Sunny provided loans 13 and 14 because:

- these loans had the effect of unfairly prolonging Mr C's indebtedness by allowing him to take expensive credit over an extended period and;
- the sheer number of loans 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, I'm upholding Mr C's complaint about loans 6 to 14. And I've set out what Sunny should do to put things right as detailed below - I've also included loans 15 to 20 which, as I've explained, Sunny has already agreed it shouldn't have lent.

Putting things right

Considering what Sunny has already agreed to do, in order to put things right it should:

- refund all interest and charges Mr C paid on loans 6 to 20;
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid to the date of settlement*;
- remove adverse information about loans 6 to 12 from Mr C's credit file;
- remove loans 13 to 20 from Mr C's credit file entirely, this is because the period of time Mr C owed Sunny money means that any information still recorded about these loans is adverse.

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

My final decision

For the reasons given above, I partly uphold Mr C's complaint.

Elevate Credit International Limited should put things right for Mr C 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 27 July 2020.

Robert Walker
Ombudsman