

The complaint

Mr F complains that Elevate Credit International Limited (trading as Sunny) was irresponsible in its lending to him.

What happened

This complaint is about the 12 instalment loans Sunny provided to Mr F between May 2015 and October 2016. His borrowing history is set out below.

Loan	Amount	Date	Repaid
1	£2,500	12/05/2015	27/04/2016
2	£200	04/08/2015	08/12/2015
3	£100	07/09/2015	14/10/2015
4	£300	14/10/2015	08/12/2015
5	£700	08/12/2015	27/04/2016
6	£200	03/01/2016	18/01/2016
7	£300	18/01/2016	23/02/2016
8	£500	23/02/2016	29/06/2016
9	£1,400	27/04/2016	
10	£700	29/04/2016	
11	£500	29/06/2016	
12	£400	17/10/2016	

Mr F said that the loans were unaffordable and that in order to make the repayments he needed to borrow more. He said the loans trapped him in a cycle of debt.

Sunny said before the loans were provided it carried out eligibility, creditworthiness and affordability checks to ensure the amount borrowed could be repaid without undue difficulties. It reviewed Mr F's account and said that it would have been prudent to have contacted him before providing loan 9 to discuss his financial circumstances and establish if lending to him was still sustainable. It offered to uphold this complaint in regard to loans 9 to 12. It said that Mr F hadn't repaid more than he had borrowed on these loans and so no refund was due. It said the loans had been sold to a third party and it would contact it and arrange for the balances to be written off.

Mr F didn't accept Sunny's offer and brought his complaint to this service.

Our adjudicator didn't think that Sunny's offer went far enough. She thought that by loan 6 Mr F's overall pattern of borrowing suggested he had become persistently reliant on short-term loans and so upheld this complaint in regard to loans 6 to 12.

Sunny didn't agree with our adjudicator's view. It said the repayments on the loans accounted for a low proportion of Mr F's monthly income and that although he had more than one loan outstanding at a time this was taken into consideration. It said there was no evidence of detriment to Mr F and that he didn't tell it he was experiencing financial difficulties. It confirmed its offer in regard to loans 9 onto 12 was still available.

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 that Mr F 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 a 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.

I think that it is important for me to start by saying that Sunny was required to establish whether Mr F 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 Consumer Credit Sourcebook ("CONC"), defines 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 F's complaint.

Our adjudicator didn't uphold loans 1 to 5. Having looked at the information provided, I agree that there isn't enough to say that these loans shouldn't have been provided.

As well as considering the information regarding the affordability of the loans, I've also looked at the overall pattern of Sunny's lending history with Mr F, 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 F's case, I agree without adjudicator that this point was reached by loan 6.

At this point Sunny ought to have realised Mr F was not managing to repay his loans sustainably. Mr F had taken out six loans in around seven months – at times overlapping with existing loans, and when repayments were made, he immediately borrowed again and the amounts borrowed increased. So Sunny ought to have realised it was more likely than not Mr F was having to borrow further to cover the hole repaying his previous loan was leaving in his finances and that Mr F's indebtedness was increasing unsustainably.

Mr F's first loan was for the largest amount and remained outstanding for a number of months. He was then borrowing additional amounts concurrently. His total indebtedness wasn't reducing and given his pattern of borrowing I think Sunny ought to have known that Mr F was not likely borrowing to meet a temporary shortfall in his income but to meet an ongoing need. This pattern continued and Mr F wasn't making any real inroads to the amount he owed Sunny.

I think that Mr F lost out because Sunny continued to lend from loan 6 onwards because these loans had the effect of unfairly prolonging Mr F's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.

Also the number of loans Mr F borrowed was likely to have had negative implications on Mr F's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So, I'm also upholding the complaint about loans 6 onwards.

Putting things right

I am upholding this complaint in regard to loans 6 to 12. Sunny has said that loans 9 to 12 had been transferred to a third party. It should buy these loans back if it is able to do so and then take the following steps. If it is not able to buy the debts back then Sunny should liaise, where necessary, with the new debt owner to achieve the results outlined below.

- Refund all interest and charges Mr F paid on all upheld loans without an outstanding balance, along with 8% simple interest* on the individual payments from the date of payment to the date the complaint is settled.
- Remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr F as though they had been repayments of the principal on all outstanding loans. If this results in Mr F having made overpayments then these should be refunded along with 8% simple interest* calculated from the date the overpayments would have arisen, to the date the complaint is settled.
- If there is still an outstanding capital balance then the amounts calculated above □ should be used to offset this and any surplus should then be paid to Mr F.

- The overall pattern of Mr F's borrowing for loans 6 to 12 means any information recorded about them is adverse. These loans should be removed entirely from Mr F's credit file. Any outstanding loans do not need to be removed from Mr F's credit file until they have been repaid, but Sunny should still remove any adverse information recorded about these loans.

*HM Revenue & Customs requires Sunny to deduct tax from this interest. Sunny should give Mr F a certificate showing how much tax has been deducted, if he asks for one.

My final decision

For the reasons given above, I'm partially upholding Mr F's complaint. Elevate Credit International Limited should pay Mr F compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 26 July 2020.

Jane Archer
Ombudsman