

The complaint

Mr M complains that Elevate Credit International Limited (trading as Sunny) irresponsibly gave him loans he couldn't afford to pay back.

What happened

Sunny gave Mr M five loans between September 2018 and March 2019.

Here are some of the main details of those loans:

Loan	Date Taken	Date Repaid	Instalments	Amount	Highest* Monthly Repayment*
1	28/09/2018	20/03/2019	6	£600.00	£159.56
2	26/10/2018	outstanding	6	£50.00	£175.57
3	03/12/2018	outstanding	6	£100.00	£205.69
4	24/12/2018	outstanding	6	£100.00	£234.57
5	26/03/2019	outstanding	6	£600.00	£247.26

Mr M said that Sunny gave him these loans when he was already taking out other payday loans to cover the repayments and these loans shouldn't have been provided if Sunny had done better checks before lending to him.

Our adjudicator thought that there wasn't enough to say that loans 1, 2 and 3 shouldn't have been provided. But, at the point of loan 4, she felt that Sunny ought to have realised it was unlikely Mr M would've been able to sustainably repay this loan (or any further loan) as he already had 3 other loans outstanding with Sunny. So our adjudicator upheld Mr M's complaint about loans 4 and 5 and set out the steps Sunny should take to put things right.

Mr M told us he was looking forward to hearing what Sunny would say in response to her view letter and he asked the adjudicator to let him know if anything further was required from him.

Sunny didn't accept our adjudicator's view and asked for an ombudsman to review the complaint.

Mr M got in touch to say he overlooked sending us some further information – our adjudicator confirmed he was still able to do this. But Mr M didn't get in touch further and appeared not to have responded to our adjudicator's email.

So I felt that the fairest way to progress the case towards a conclusion was for me to set out my thoughts in a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

“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 M 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.

Sunny was required to establish whether Mr M 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. 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 to fairly and reasonably 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 M's complaint.

Our adjudicator didn't think she had enough evidence to say loans 1, 2 and 3 shouldn't have been provided. I've looked at the information gathered, including income and expenditure information from the time, and I agree.

loan 1

I don't think Sunny was wrong to lend Mr M loan 1. This was his first loan with Sunny and so I think Sunny was entitled to rely on the information Mr M provided as there was no reason to disbelieve what Mr M said or question the information he provided.

The information Sunny recorded for Mr M suggested that he was well able to afford this borrowing. There wasn't anything else shown in the checks Sunny did that indicated otherwise.

At this early stage, Mr M didn't have any track record with the lender that should've alerted Sunny to any underlying money problems.

And I can't see that there was anything in the information Mr M provided or the information Sunny should've been aware of, which meant that Sunny should've taken steps to verify the information Mr M had declared.

So I don't uphold Mr M's complaint about loan 1.

loan 2

A month or so after he took out loan 1, Mr M took out loan 2.

Sunny asked Mr M to update the information he provided about his finances each time he applied for a new loan and the loan repayments still looked to be affordable for Mr M – even bearing in mind that he was still paying loan 1. There wasn't anything to indicate to Sunny that Mr M had found it hard to manage the loan repayments for loan 1 or that paying for this loan was likely to become a problem.

So I don't uphold Mr M's complaint about loan 2.

loan 3

Mr M took out loan 3 a little over a month after he took out loan 2 – and while he was still paying loans 1 and 2.

I don't feel I've seen enough to say Sunny shouldn't have provided this loan to Mr M. It was still quite early in the lending relationship and the combined loan repayments for all three loans should still have been affordable for Mr M looking at the information Sunny had gathered about his finances.

The repayments on loans 1 and 2 were up to date when Mr M took out loan 3. So, although he later had problems paying these loans, I don't think there was anything at the time to make Sunny think it was likely that paying loans 2 and 3 would become a problem for Mr M.

Bearing in mind the amounts Mr M borrowed (loans 2 and 3 were a lot less than his first loan), I think the checks were enough for Sunny to agree to provide loan 3. That's why I'm not planning on upholding Mr M's complaint about this loan.

But looking at Mr M's continuing borrowing pattern, I can see that when he asked to take out loan 4 he was still paying for loans 1, 2 and 3. And this time he asked for another £100 loan – after having already borrowed this amount just three weeks or so earlier.

This suggests that he might've been having problems managing his money.

So although the loan looked affordable on the figures Mr M gave I don't think that Sunny should've continued to lend to Mr M without a more thorough check of his circumstances.

I've taken into account the checks Sunny said it carried out before approving this loan. But I think at this point Sunny should have made more in-depth enquiries into Mr M's finances as his borrowing pattern was at odds with what he'd told Sunny about his financial circumstances. Sunny hasn't shown me it did this. So I can't fairly say that it carried out proportionate checks before agreeing loan 4.

Mr M has provided some bank statements so I've looked through these to see what Sunny was likely to have found out. To be clear, I'm not suggesting Sunny should have done this. But, in the absence of other evidence, I think these give a reasonable picture of Mr M's finances at the time. And had Sunny looked in more depth at Mr M's finances it would likely have seen that he was facing serious problems managing his money.

I think Sunny would've learnt that Mr M had an established record of taking out short term loans. Sunny would've realised that it looked like Mr M had used some of the money he'd previously borrowed from Sunny to repay other short term loans. And it would've likely found out that Mr M had other short term loans outstanding when Sunny provided loan 4 to him – on top of his other loans already outstanding with Sunny.

This means I don't think it was reasonable for Sunny to think that it was likely Mr M would be able sustainably to repay loan 4. So it shouldn't have provided this loan – or allowed Mr M to borrow any further.

In coming to my decision I've thought carefully about everything Sunny has said – including comments made in response to our adjudicator's opinion. But just because Sunny allowed customers to take out up to four loans at a time doesn't mean that loan 4 was sustainably affordable for Mr M. For the reasons set out above, I don't think Sunny should've provided loan 4 to Mr M.

So as things stand at the moment, I'm planning on upholding Mr M's complaint about loans 4 and 5.”

What the parties said in response to my provisional decision

Neither party has sent me any further information or commented on what I've said in my provisional decision.

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.

Having done so, and as no further comments have been received in response to my provisional decision that change what I think about this case, I still think it's fair to uphold this complaint for the reasons I explained in my provisional decision.

Putting things right – what I'm planning to say Sunny needs to do

If Sunny has sold any outstanding debt it should buy it back before doing what I have outlined below. If Sunny isn't able to buy the debt back then it should liaise with the new debt owner to achieve the following:

- A. Remove all interest, fees and charges from the balances on loans 4 and 5, and treat any repayments made by Mr M as though they had been repayments of the principal.
- B. If this results in Mr M having made overpayments then these should be paid back to Mr M with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled.
- C. If there is still an outstanding balance owed in respect of these loans then the amounts calculated in "A" should be used to repay this. Any surplus should be paid to Mr M. And if there is still an outstanding balance, then Sunny should try to agree an affordable repayment plan with Mr M.
- D. Remove all adverse entries from Mr M's credit file for loans 4 and 5 once they are repaid – and ask the debt purchaser to do the same if Sunny sold these loans on.

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

My final decision

I partly uphold this complaint and direct Elevate Credit International Limited (trading as Sunny) to take the steps I've set out above to put things right for Mr M.

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

Susan Webb
Ombudsman