

complaint

Mr O complains that Elevate Credit International Limited ('Sunny') lent irresponsibly to him.

background

Mr O borrowed nine loans from Sunny between January 2017 and September 2017. His borrowing history is as follows:

Loan number	Date taken out	Date repaid	Number of planned instalments	Principal	Largest repayment
1	08/01/2017	23/06/2017	6	£700.00	£211.72
2	06/02/2017	25/07/2017	6	£100.00	£242.14
3	28/02/2017	25/08/2017	6	£100.00	£274.29
4	06/04/2017	25/09/2017	6	£100.00	£305.13
5	24/06/2017	28/10/2017	6	£550.00	£276.73
6	25/07/2017	26/09/2017	6	£100.00	£279.69
7	25/08/2017	28/10/2017	6	£100.00	£280.86
8	25/09/2017	28/10/2017	6	£150.00	£249.98
9	26/09/2017	28/10/2017	6	£350.00	£365.00

Our adjudicator thought the complaint should be upheld in respect of loans 3 to 9. She thought Sunny should have undertaken more checks from loan 3. She said if it had done so, it would have seen that Mr O had difficulty managing his money. She thought the pattern of lending from loan 6 showed that he had become reliant on short term loans and the pattern of lending showed his borrowing was unsustainable.

Sunny disagreed with that view. It said it offered customer's the chance to have four loans at once to give them greater personal choice. I believed that Mr O had to pay on average 6.38% of his monthly income towards his borrowing. It noted that our adjudicator said Mr O was making regular payments to online gambling sites but said that was his personal choice. Sunny said that gambling transactions were '*completely irrelevant*' to the complaint. Sunny said that as Mr O had repaid all of his loans without any record of detriment and so the repayments must have been sustainable.

As the parties are not in agreement with our adjudicator, 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 O 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 O 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 O's complaint.

As I said above, our adjudicator didn't think the complaint should be upheld for loans 1 and 2. Mr O did not dispute what our adjudicator said about that borrowing. So, I have not considered whether Sunny irresponsibly lent loans 1 and 2 any further.

I think our adjudicator was right when she said that Sunny should have carried out further checks at loan 3. In January 2017, Mr O had taken out a fairly significant loan of £700. He had taken out another loan of £100 shortly afterwards. Loan 3 was the third loan he had applied for within two months and if agreed, meant he would have borrowed £900 during that time.

I think the timing of the application for loan 3 is important. Mr O applied for this loan a matter of days after he'd made a repayment of over £200 towards loans 1 and 2. With that in mind, I think it should have reasonably appeared to Sunny that Mr O had applied for that extra borrowing to plug a hole in his finances caused by repaying loans 1 and 2. It raised questions about whether he was able meet his existing repayments. At that point, Sunny

should have done further checks and conducted a full review of Mr O's financial circumstances.

Had that full review been carried out, I think Sunny would have seen that a significant portion of Mr O's income was being spent on online gambling transactions. Most of the transactions on his bank statements were for online betting sites. A proportionate check would have shown Sunny that Mr O was probably struggling financially. And at that stage, Sunny would have realised that he could not sustainably repay loan 3. The same is true for loans 4 and 5.

I can see that in its response to our adjudicator, Sunny said that the gambling transactions Mr O made were '*completely irrelevant*' to the complaint. I disagree. As I said above, the question Sunny needed to ask itself was whether Mr O could sustainably repay his loans. As he was spending hundreds of pounds each month with online bookmakers, that spending clearly has an impact on how he can sustainably afford his repayments. Ignoring a significant feature of the way Mr O manages his finances is not responsible lending.

I've also thought about what Sunny said about the proportion of income that Mr O would have been required to spend on his monthly repayments. Sunny estimated that figure to be in the region of 6%. By the time Mr O applied for loan 3 and taking account of the repayments he would have to make for all three loans at the same time, he would have been spending over 20% of his income on his Sunny loan repayments. That figure alone is not substantial. But when put into context alongside Mr O's gambling transactions, I agree with our adjudicator that a proportionate check would have shown Sunny that Mr O could not sustainably repay loans 3 to 5.

I've also looked at the overall pattern of Sunny's lending history with Mr O with a view to seeing if there was a point at which it should reasonably have seen that further lending was unsustainable, or otherwise harmful. If that was the case, Sunny should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mr O's case, I think that this point was reached by loan 6. I say this because:

- At this point Sunny ought to have realised Mr O was not managing to repay his loans sustainably. Mr O had taken out six loans in around six months. So Sunny ought to have realised it was more likely than not Mr O was having to borrow further to cover the hole repaying his previous loan was leaving in his finances and that Mr O's indebtedness was increasing unsustainably.
- Mr O frequently borrowed £100. Sunny ought to have known that he was not likely borrowing to meet a temporary shortfall in his income but to meet an ongoing need.
- As I said above, Sunny told us that it allowed a customer to have four loans running simultaneously. I can see that when Mr O's borrowing reduced to three loans, he would take out a fourth that same day.

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

- these loans had the effect of unfairly prolonging Mr O's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.

- the number of loans which Mr O borrowed was likely to have had negative implications on his ability to access mainstream credit and so kept him/her in the market for these high-cost loans.

So I'm also upholding the complaint about loans 3 to 5 and loans 6 to 9 and Sunny should put things right.

putting things right – what Sunny needs to do

- refund all interest and charges Mr O paid on loans 3 to 9.
- 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 3 to 5 from Mr O'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 to 9 should be removed from Mr O's credit file.

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

my final decision

For the reasons given above, I'm partly upholding Mr O's complaint. Elevate Credit International Limited must put things right for Mr O as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 24 February 2020.

Nicola Bowes
ombudsman