Financial Ombudsman Service

Complaint

Mr K says Elevate Credit International Limited (trading as Sunny) irresponsibly lent to him.

Background

This complaint is about 1 running credit facility (RCF) and 33 instalment loans Sunny provided Mr K between November 2014 and July 2018. A summary of Mr K's borrowing, based on the information provided to us by Sunny, can be found in the appendix, at the end of this decision.

Our adjudicator noticed there was a gap in lending of around 11 months between loans 22 and 23. So she considered that Mr K had two chains of lending. For the first chain of lending she didn't think that loan 5 should've been given because a proportionate check would've likely shown Sunny that Mr K was gambling and had a number of outstanding short term loans. She also thought, by the time of loan 6, the pattern of lending suggested these loans were no longer sustainable. So she thought shouldn't have given Mr K loans 5 – 22.

For the second chain, the adjudicator again thought proportionate checks would've likely shown Sunny that Mr K was still gambling a significant portion of his income as well as having a significant number of outstanding short term loans. So overall, the adjudicator upheld loans 5 – 34.

Sunny disagreed with the adjudicator, and made a number of points including;

- Based on the checks Sunny carried out, Mr K had sufficient disposable income to be able to repay these loans;
- Mr K didn't contact Sunny to inform it of any financial difficulties and
- Mr K was never in arrears with any of this lending.

But Sunny did make an offer to settle the complaint – it agreed to upheld loans 14 – 21. And this offer was in line with the adjudicator's recommendation for these loans. This offer was put to Mr K but he didn't accept it.

As no agreement could be reached, the case has been passed to me for 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 K 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 K 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 K's complaint.

To start with, it seems that Mr K has accepted our adjudicator's findings – so I think this means I no longer need to make a decision about loans 1 – 4. But I have kept these loans in mind when thinking about Mr K's lending relationship with Sunny.

Equally, I've kept in mind that Sunny has accepted that something may have gone wrong when loans 14 – 21 was granted.

By loan 5 I think Sunny's checks needed to go further and it could no longer rely on the information Mr K was providing. By then, it needed to gain a full and complete picture of Mr K's financial position. So like our adjudicator explained, by loan 5, proportionate checks would most likely have shown that**;**

- Mr K was already indebted to five short term lenders; in addition to this Mr K was a regular user of gambling and betting websites. In these circumstances, there was a significant risk that Mr K wouldn't have been able to repay this loan without undue difficulty or without borrowing further.

  I don't think that Sunny could reasonably have believed that Mr K would be able to make the payments for this loan, over the term bearing in mind what a proportionate check would've likely shown. So it was likely that Mr K would have to return to Sunny to borrow again. So I don't think this loan should've been provided.

I've also looked at the overall pattern of Sunny's lending history with Mr K, 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, in this chain of lending.

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

- At this point Sunny ought to have realised Mr K was not managing to repay their loans sustainably. Mr K had taken out six loans within eight months and Mr K had been indebted to Sunny for the entire time. Loan 6 was also taken out the day after loan 5 was repaid, and around a week after loan 4 had been repaid. So Sunny ought to have realised it was more likely than not Mr K was having to borrow further to cover the hole repaying his previous loan was leaving in his finances and that Mr K's indebtedness was increasing unsustainably.

- Mr K's first instalment loan was for £150 and loan 6 was for £200. At this point Sunny ought to have known that Mr K was not likely borrowing to meet a temporary shortfall in his income but to meet an ongoing need.

- From loan 6 onwards Mr K was normally provided with a new loan within days of settling a previous one.

- Mr K wasn't making any real inroads to the amount he owed Sunny. Loan 22 was taken out 25 months after Mr K's first. And it was his largest instalment loan to date. Mr K had paid large amounts of interest to, in effect; service a debt to Sunny over an extended period.

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

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

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

So I'm upholding Mr K's complaint about loans 5 – 22.

As I've explained above, after loan 22 there was a gap of almost a year before loan 23 was provided. So like our adjudicator, I agree that the borrowing from loan 23 this was a new chain of lending. And, like the adjudicator I think Sunny needed to take due regard of the fact that Mr K's previous lending relationship had lasted nearly two years.

So a proportionate check, when Mr K applied for loan 23 would've likely shown that Mr K's financial position hadn't significantly changed since loan 5. Mr K was using a number of other short term lenders. In addition to this Mr K was still using gambling and betting websites. In these circumstances, there was a significant risk that Mr K wouldn't have been able to repay this loan or any future loans without undue difficulty or without borrowing further.

So overall, based on what proportionate checks would've likely shown Sunny, I don't think it should have approved loans 5 – 34. And I've set out below what Sunny needs to do to put things right.

Putting things right – what Sunny needs to do

In addition to what Sunny has agreed to do, it should;

- refund all interest and charges Mr K paid on loans 5 - 34;
- 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 any negative information about loan 5 and loans 23 - 34 from Mr K'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 - 22 should be removed from Mr K's credit file.

† HM Revenue & Customs requires Sunny to take off tax from this interest. Sunny must give Mr K 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 K's complaint.

Elevate Credit International Limited should pay Mr K compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 June 2020.

Robert Walker
ombudsman

Appendix

loan number	loan amount	received date	actual repayment date
1	£500.00	03/11/2014	19/12/2014
2	£150.00	16/01/2015	25/06/2015
3	£100.00	22/02/2015	04/07/2015
4	£100.00	14/03/2015	04/07/2015
5	£100.00	05/07/2015	09/07/2015
6	£200.00	10/07/2015	29/08/2015
7	£50.00	16/07/2015	27/07/2015
8	£50.00	23/07/2015	24/07/2015
9	£300.00	07/08/2015	29/08/2015
10	£100.00	28/08/2015	29/08/2015
11	£500.00	03/09/2015	13/10/2015
12	£300.00	07/09/2015	23/01/2016
13	£350.00	22/12/2015	30/01/2016
14	£150.00	29/01/2016	08/03/2016
15	£50.00	16/03/2016	11/05/2016
16	£250.00	29/03/2016	01/07/2016
17	£150.00	05/04/2016	14/09/2016
18	£50.00	10/09/2016	17/12/2016
19	£50.00	14/09/2016	17/12/2016
20	£50.00	15/09/2016	17/12/2016
21	£50.00	18/10/2016	17/12/2016
22	£500.00	28/12/2016	01/02/2017
23	£50.00	01/01/2018	23/03/2018
24	£50.00	02/01/2018	23/03/2018
25	£50.00	05/01/2018	23/03/2018
26	£100.00	12/01/2018	23/02/2018
27	£300.00	04/03/2018	24/03/2018
28	£100.00	08/04/2018	11/07/2018
29	£50.00	08/04/2018	30/07/2018
30	£50.00	10/04/2018	30/07/2018
31	£50.00	11/04/2018	23/07/2018
32	£50.00	21/07/2018	30/07/2018
33	£100.00	23/07/2018	25/01/2019
34	£400.00	30/07/2018	13/09/2018