

complaint

Mr G complains that Elevate Credit International Limited (trading as 'Sunny') gave him loans irresponsibly.

background

This complaint is about 5 loans Sunny provided to Mr G between April and July 2018. Here's a table showing these loans - all have been repaid.

| Loan no | Start date | Instalments | amount £ | Date repaid |
|----------------|-------------------|--------------------|-----------------|--------------------|
| 1 | 24/04/2018 | 6 | 200 | 31/10/2018 |
| 2 | 29/04/2018 | 6 | 100 | 31/07/2018 |
| 3 | 30/04/2018 | 6 | 200 | 15/06/2018 |
| 4 | 05/05/2018 | 6 | 150 | 31/10/2018 |
| 5 | 15/07/2018 | 6 | 50 | 31/10/2018 |

Mr G complained that Sunny had failed to correctly identify that he'd become dependent on loans and become stuck in a cycle of borrowing to repay previous loans.

Our adjudicator felt that the complaint should be upheld in part. He said that by loan 4 Mr G already had three loans outstanding, so this should've alerted Sunny to the possibility that he might have been having problems managing his money. And he felt that Sunny ought to have realised it was unlikely Mr G would've been able to repay this borrowing, and any subsequent loans, in a sustainable way.

So our adjudicator said Sunny shouldn't have lent Mr G loan 4 or loan 5.

To put things right our adjudicator recommended that Sunny should refund all interest and charges Mr G had paid on loans 4 and 5 plus interest on the refunds, and amend his credit file to remove any adverse information about these loans.

Sunny disagreed with our adjudicator's view. Mainly it said that Mr G's loan repayments were deemed to be affordable and sustainable based upon the income and expenditure information he provided – and Sunny said it had loaned Mr G less than he'd asked for when he applied for loan 1. It said it carried out eligibility, creditworthiness and affordability checks before making a decision to provide lending or decline a loan application.

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 G 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 G could sustainably repay his/her 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 G's complaint.

I think that the checks Sunny did before agreeing the first three loans were proportionate. Sunny should've had some concerns about the frequency of Mr G's borrowing – he took the first three loans within the space of just six days. But the amounts that Mr G needed to repay, even when considering the combined repayments, were relatively small compared with the disposable income he'd declared. Given these repayment amounts, what was apparent about Mr G's circumstances at the time, and his borrowing history with Sunny, I don't think it would've been proportionate for Sunny to ask him for the amount of information that would be needed to show the lending was unsustainable before agreeing the first three loans.

When Mr G asked for his fourth loan, this was his fourth request in less than two weeks. By then he'd not even started repaying any of his previous three loans. So I think Sunny should have realised that it was no longer reasonable to base its lending decision on the information Mr G was providing. I think it would have been proportionate for Sunny to have taken steps to independently check the true state of Mr G's finances.

Had Sunny looked in depth at Mr G's finances it would have seen that he was facing serious problems managing his money. It would have seen that Mr G was spending significant amounts on what appear to be online gambling transactions. And it would have seen that he had used some of the money he'd previously borrowed from Sunny to repay other short term loans that were due. So I don't think it was reasonable for Sunny to conclude that it was likely Mr G would be able to repay this, or any subsequent loan, in a sustainable manner.

So I'm upholding the complaint about loans 4 and 5 and Sunny should put things right.

putting things right – what Sunny needs to do

- refund all interest and charges Mr G paid on loans 4 and 5 (taken out on 05/05/2018 and 15/07/2018);
- 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 4 and 5 from Mr G's credit file;

† HM Revenue & Customs requires Sunny to take off tax from this interest. Sunny must give Mr G 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 partially upholding Mr G's complaint. Elevate Credit International Limited should pay Mr G as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 11 November 2019.

Susan Webb
ombudsman