

complaint

Mrs R says Elevate Credit International Limited (trading as Sunny) irresponsibly lent to her.

background

This complaint is about 31 instalment loans Sunny provided to Mrs R between August 2015 and November 2016. There is a summary of Mrs R's lending history from Sunny in the appendix.

Our adjudicator upheld Mrs R's complaint in part and thought the loans from loan 4 onwards shouldn't have been given. Sunny didn't agree, saying it thought only the loans from loan 11 onwards when Mrs R's total monthly outgoings exceeded £2,000 should be upheld. Mrs R didn't accept that so the complaint was passed to me.

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 Mrs R 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 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 Mrs R could sustainably repay 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 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 Mrs R's complaint.

I agree with the adjudicator, and for the same reasons, that there was nothing to indicate Sunny needed to do more when it approved loans 1 to 3. So I don't think Sunny was wrong to give loans 1 to 3 to Mrs R.

However I don't think Sunny carried out proportionate checks for loans 4 and 5. Had it done so, I think Sunny would most likely have made different lending decisions. I say this because by loan 4 there were clear signs that Mrs R was struggling to manage her money, and this hadn't changed when she applied for loan 5 a few weeks later. When Mrs R applied for loan 4 she had two outstanding loans with Sunny and in just the five days prior to her application she had taken out short-term high cost credit from three other lenders. So it was most likely she was just borrowing to pay off other loans. And there were frequent gambling transactions on her bank statements, further indicating it was likely Mrs R had wider financial problems.

In response to our view, Sunny said it's not its role to dictate how a customer spends their money. But the adjudicator's reference to gambling transactions was not an inference that Sunny should dictate a customer's expenditure, rather that such spending behaviour can be an indicator of financial difficulties. I think it was in this case. Mrs R bet over £850 in October 2015 and this should have raised concerns about her ability to meet her loan repayments ongoing. Sunny also said it doesn't use bank statements in its checks – and I agree it is under no obligation to do so, but I think they are one way Sunny could have better understood Mrs R's situation before deciding to lend.

It follows I don't think Sunny should have given loans 4 and 5 to Mrs R.

I've then looked at the overall pattern of Sunny's lending history with Mrs R, 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 Mrs R's case, I think that this point was reached at loan 6. I say this because:

- At this point Sunny ought to have realised Mrs R was not managing to repay her loans sustainably. Mrs R had taken out six loans within 11 weeks. So Sunny ought to have realised it was more likely than not Mrs R was having to borrow further to cover the hole repaying her previous loan(s) was leaving in her finances and that Mrs R's indebtedness was increasing unsustainably.
- From loan 6 onwards Mrs R was provided with a new loan within days of settling a previous one.

- Mrs R wasn't making any real inroads to the amount she owed Sunny. She had taken out 30 loans in the 14 months after her first loan. Sunny ought to have known that Mrs R was not likely borrowing to meet a temporary shortfall in her income but to meet an ongoing need. Mrs R had paid large amounts of interest to, in effect, service a debt to Sunny over an extended period.
- The loans were instalment loans, each with 24 week terms. But Mrs R frequently repaid her loan in the same month that she'd taken it out. This isn't how instalment loans should usually work. I think this pattern of lending should have alerted Sunny to the likelihood that Mrs R was having problems managing her money. I think that Sunny should've been concerned that Mrs R might be borrowing elsewhere to repay its loans, again increasing her indebtedness unsustainably.

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

- these loans had the effect of unfairly prolonging Mrs R's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period of time.
- the number of loans was likely to have had negative implications on Mrs R's ability to access mainstream credit and so kept her in the market for these high-cost loans.

I have carefully considered Sunny's response to our adjudicator's view. In summary, it explained the checks it had carried out on eligibility, affordability and credit worthiness. It said it only ever gave Mrs R a small amount of credit relative to her income. It also highlighted that Mrs R repaid a number of her loans early, arguing that this shows good loans management. But these points don't change my conclusion.

Sunny was required to do more than check Mrs R could afford each individual loan on a strict pounds and pence basis. It had to ensure Mrs R's borrowing was sustainably affordable, and from loan 6 onwards the pattern of Mrs R's borrowing did not suggest this was the case. Rather, it seems it was unfairly extending her use of high cost short term credit.

And with regards to the point about Mrs R's repayment behaviour - it might, in different circumstances, be reasonable to conclude that the early repayment of a loan indicates an improvement in financial circumstances. But I disagree that was the case here, as shown by Mrs R's frequent and ongoing use of expensive credit. I think Sunny would have needed a lot more information on her financial situation to fairly conclude she was undertaking 'good loans management'. I think a more reasonable conclusion would have been that she was most likely making early repayments by borrowing elsewhere, thereby increasing her indebtedness unsustainably.

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

putting things right – what Sunny needs to do

- refund all interest and charges Mrs R paid on loans 4 to 31;

- 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 loans 4 and 5 from Mrs R'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 31 should be removed from Mrs R's credit file.

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

my final decision

For the reasons given above, I'm partially upholding Mrs R's complaint. Elevate Credit International Limited (trading as Sunny) should pay Mrs R compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs R to accept or reject my decision before 2 November 2019.

Rebecca Connelley
ombudsman

Appendix

Loan	Taken out	Repaid	Amount, £
1	24/08/2015	10/11/2015	400
2	04/09/2015	10/11/2015	550
3	14/09/2015	23/09/2015	50
4	26/09/2015	06/11/2015	100
5	06/11/2015	10/11/2015	250
6	14/11/2015	16/02/2016	250
7	15/11/2015	21/11/2015	100
8	16/11/2015	13/12/2015	150
9	21/11/2015	26/02/2016	550
10	13/12/2015	16/02/2016	200
11	05/03/2016	22/03/2016	100
12	10/03/2016	23/03/2016	150
13	01/04/2016	21/06/2016	150
14	07/04/2016	26/04/2016	50
15	11/04/2016	03/05/2016	50
16	10/05/2016	21/06/2016	100
17	04/06/2016	13/06/2016	50
18	07/07/2016	08/07/2016	50
19	14/07/2016	20/07/2016	50
20	16/07/2016	20/07/2016	50
21	28/07/2016	09/08/2016	100
22	30/07/2016	09/08/2016	100
23	07/08/2016	09/08/2016	50
24	31/08/2016	07/09/2016	100
25	06/09/2016	11/09/2016	150
26	08/09/2016	18/10/2016	100
27	11/09/2016	12/10/2017	400
28	22/09/2016	05/09/2017	100
29	18/10/2016	07/10/2017	450
30	20/10/2016	04/11/2016	50
31	08/11/2016	12/10/2017	200