

## **complaint**

Mr H complains that Elevate Credit International Limited (trading as Sunny) gave him instalment loans he couldn't afford. He wants a refund with interest.

## **background**

Mr H had 20 loans from Sunny between April 2015 and February 2017. He said proper checks would have shown that the loans were unaffordable for him. Sunny said it had carried out proportionate affordability checks and it had lent Mr H affordable amounts.

Our adjudicator recommended that the complaint should be upheld in part. She thought Sunny's affordability checks had been proportionate for Mr H's first four loans, but not thereafter. She thought that if Sunny had made better checks on loans five to twenty, it would have seen that loan five was unaffordable for Mr H due to his spending on living costs, other credit and gambling.

So the adjudicator recommended that Sunny should refund Mr H's interest and charges for loan five, with interest, and remove any related adverse information from his credit file.

Sunny replied that it didn't accept that Mr H's gambling was out of control and that this meant loan five was unaffordable.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Mr H's first four loans were repaid in six monthly instalments of £62 or less. But loan five was taken while loan four was still running. Later loans also overlapped and the amounts borrowed increased so that Mr H's monthly repayments were higher. Mr H repaid many of his loans early.

Sunny was required to lend responsibly. It should have made checks to make sure Mr H could afford to repay the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr H was borrowing, and his lending history. But there was no set list of checks Sunny had to do.

Sunny said it asked Mr H for his monthly income which was £2,166 for loan one and higher thereafter. It asked for his living expenses which were £736 for loan one. And it carried out credit checks on Mr H. It said these contained some adverse information which meant that it restricted the amount it lent to Mr H.

I agree with the adjudicator that Sunny's affordability checks were proportionate and sufficient for loans one to four. The amounts Mr H had to repay were small compared to his stated disposable income. The loans looked affordable. So I can't say that Sunny was wrong to approve them.

But I also agree that Sunny should have been prompted by the pattern of Mr H's borrowing to ask further questions from loan five onwards. I think it should have looked to verify what Mr H had told it about his finances and reviewed his situation to check that he wasn't dependent on its loans.

I've looked at Mr H's bank statements from the time to get this information about his finances, but Sunny could easily have asked Mr H for it. These show that Mr H had been accurate about his income, but he'd understated his expenses for his living costs, regular bills and credit commitments. He was also gambling regularly.

I've looked at the totals of his outgoings for these items across loans five to twenty and compared them to Mr H's income. I can see that Mr H was managing to keep within his disposable income. But the month before loan five the amount he had left for emergencies was very small. His repayments for loans four and five would place him in a risky situation.

So I think if Sunny had made proportionate checks for loan five it would have seen, as I have, that Mr H wouldn't have enough disposable income to repay his loan comfortably. So I think it was wrong for Sunny to approve loan five.

I also think if Sunny had made enough checks from loan five onwards it would have seen that Mr H was often gambling. I think that, as a responsible lender, it would have looked closely at how Mr H managed his gambling. But I think these checks would have shown that loans six to twenty were affordable. So I can't say it was wrong for Sunny to approve them.

### **my final decision**

My final decision is that I uphold this complaint in part. I require Elevate Credit International Limited (trading as Sunny) to do the following:

1. Refund Mr H the interest and charges he paid for loan five, adding interest at 8% simple per annum from the date of payment to the date of settlement.
2. HM Revenue & Customs requires Sunny to withhold income tax from that interest. It must give Mr H a certificate showing how much it's taken off if he asks for one.
3. Remove any adverse information relating to this loan from Mr H's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 27 November 2017.

Phillip Berechree  
**ombudsman**