

complaint

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

background

This complaint is about 11 instalment loans Sunny provided to Mr M between 21 August 2017 and 19 January 2018. Mr M borrowed amounts ranging between £100 and £500. The loans were to be repaid in six monthly instalments. Mr M often repaid his loans early, but some loans overlapped so that in some months he was expected to repay amounts up to about £300. From what I can see, Mr M repaid all his loans.

Our adjudicator upheld Mr M's complaint in part and thought the loans from loan four onwards shouldn't have been given. Sunny disagreed. It said it didn't scrutinise consumer's bank statements. It said it was for consumers to decide how to spend their income. Sunny asked for an ombudsman's review and so the complaint was 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 M 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 Mr M 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 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 Mr M's complaint.

Sunny asked Mr M for information about his income and expenditure and it carried out credit checks. Mr M said he earned £1,150 a month and his monthly expenditure ranged between £350 and £475. For loans one to three, Mr M had to repay amounts ranging between about £25 and £159 a month. He repaid loan two on the same day he took it out.

For Mr M's first three loans, given the loan amounts, what was apparent about Mr M's circumstances at the time and his history with Sunny, I don't think it would've been proportionate to ask him for the amount of information needed to show the lending was unsustainable. There wasn't anything in the information Mr M provided or the information Sunny should've been aware of, which meant it would've been proportionate to start verifying what Mr M was saying. So I can't say it was wrong for Sunny to provide loans one to three.

But loan four was Mr M's fourth loan in two months. He took it out the same day he repaid loan three. So I think Sunny should have asked further questions about Mr M's finances and verified what he'd told it before approving further loans. Sunny said it verified Mr M's income. But I can't see that it verified his outgoings, for example by looking at his bank statements. So I don't think Sunny's affordability checks for loan four were proportionate or sufficient.

As our adjudicator explained, a proportionate check for loan four would most likely have shown that Mr M was having problems managing his money and he was using significant amounts of his income for gambling;

So I think if Sunny had made enough checks it would have seen, as I have, that Mr M was unlikely to be able to sustainably repay this loan, and any subsequent loans. So I think it shouldn't have provided Mr M with further loans from loan four onwards.

Sunny said it was for Mr M to spend his income as he chose. But I think that as a responsible lender, if it had seen that Mr M was using his loans to support a significant gambling habit, then it would have declined them.

I've also looked at the overall pattern of Sunny's lending history with Mr M, 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 Mr M's case, I think that this point was reached by loan seven. I say this because the pattern of lending shows that the loans were unsustainable:

- By loan seven, Mr M had taken seven loans in four months. The amounts he borrowed didn't significantly decrease over this period or for the rest of his borrowing. So I think Sunny should have realised that Mr M was persistently reliant on short-term borrowing.
- Mr M was provided with a new loan within days or weeks of settling a previous one. So Sunny ought to have realised it was more likely than not Mr M was having to borrow further to cover the hole repaying his previous loan was leaving in his finances.

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

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

So I'm upholding the complaint about loans four to eleven and Sunny should put things right.

putting things right – what Sunny needs to do

- refund all interest and charges Mr M paid on loans four to eleven;
- 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 four to six from Mr M's credit file;
- the number of loans taken from loan seven onwards means any information recorded about them is adverse. So all entries about loans seven to eleven should be removed from Mr M's credit file.

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

my final decision

For the reasons given above, my final decision is that I partially uphold Mr M's complaint. I require Elevate Credit International Limited (trading as Sunny) to pay Mr M compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 November 2019.

Phillip Berechree
ombudsman