

complaint

Mr J says Elevate Credit International Limited – trading as Sunny – irresponsibly lent to him.

background

This complaint is about 11 instalment loans Sunny provided to Mr J between August 2017 and June 2018. Mr J's borrowing history is as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount	Max Repayment
1	12/08/2017	08/09/2017	24	£100.00	£28.04
2	12/09/2017	22/12/2017	24	£200.00	£68.03
3	17/09/2017	02/03/2018	24	£100.00	£100.79
4	26/09/2017	05/03/2018	?	£100.00	£134.31
5	01/10/2017	05/03/2018	166	£100.00	£167.57
6	17/03/2018	30/03/2018	167	£200.00	£66.17
7	20/03/2018	30/03/2018	171	£100.00	£100.58
8	24/03/2018	30/03/2018	167	£50.00	£117.18
9	14/06/2018	18/02/2019	169	£200.00	£67.56
10	16/06/2018	18/02/2019	167	£150.00	£117.48
11	17/06/2018	18/02/2019	166	£150.00	£167.49

Our adjudicator partially upheld Mr J's complaint and thought the loans from loan 5 onwards shouldn't have been given because Mr J had outstanding loans with Sunny at the time which could have indicated he was having problems managing his money. They also felt Mr J's pattern of borrowing indicated he was becoming reliant on these types of loans.

Sunny disagreed and said it had done robust checks on Mr J before lending to him. But it offered to uphold Mr J's complaint for loan 10 and 11 but Mr J declined the offer.

As the matter couldn't be resolved informally, 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 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 J could repay the loans in a sustainable manner. These checks could consider several different things, such as how much was being lent, the repayment amounts and the consumer's income and expenditure. 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 level of income);
- the *greater* the number and frequency of loans, and the longer the period 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 J 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 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 the arguments, evidence and information provided in this context and what this all means for Mr J's complaint. Having done so, I'm partially upholding the complaint. I'll explain why.

Our adjudicator didn't think Sunny needed to do more when it approved loans 1 to 4. Mr J didn't respond to the view. As there appears to no longer be a dispute about these loans, I won't be making any findings on them.

Sunny says it carried out checks before it lent loan 5 to Mr J and the results of these checks didn't raise any concerns. But this was Mr J's fifth loan in less than two months so I think Sunny should have been looking to build a clearer picture than it did about Mr J's finances before lending to him again.

But if it had carried out proportionate checks before lending loan 5, it's likely to have found that Mr J was borrowing from another short-term lender as well as having loans 2, 3 and 4 still outstanding with itself. It will have also seen that Mr J had significant gambling transactions on his account and was struggling financially. Looking at the information provided, at the time loan 5 was taken out, Mr J owed £122 to the other short-term lender and his bank statements showed his gambling transactions had used nearly half of his visible income (which appears to be a lot less than the amount Mr J had told Sunny on his application).

I think all of this should have been enough for Sunny to be concerned that Mr J wouldn't be able to repay his loan in a sustainable way.

I've also looked at the overall pattern of Sunny's lending history with Mr J, 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 circumstances of Mr J's case, I think that this point was reached by loan 6. I say this because:

- At this point Sunny ought to have realised Mr J was not managing to repay his loans sustainably. Mr J had taken out six loans within seven months and had been indebted to Sunny for all this time. So Sunny ought to have realised it was more likely than not Mr J was having to borrow further to cover the hole repaying his previous loan was leaving in his finances and that Mr J's indebtedness was increasing unsustainably.
- Mr J's first loan was for £100 and loan 6 was for £200. At this point Sunny ought to have known that it was likely Mr J wasn't just borrowing to meet a temporary shortfall in his income but more to meet an ongoing need.
- From loan 6 onwards Mr J was provided with a new loan within weeks of taking out a previous one.
- Mr J wasn't making any real inroads to the amount he owed Sunny. Loan 11 was taken out 10 months after Mr J's first. And it was for a larger amount. Mr J had paid large amounts of interest to, in effect, service a debt to Sunny over an extended period.

I think that Mr J lost out because Sunny provided borrowing for loan 6 onwards because:

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

putting things right – what Elevate Credit International Limited needs to do

- refund all interest and charges Mr J paid on loans 5 to 11;
- 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 loan 5 from Mr J's credit file;
- any information recorded about loans 6 to 11 is adverse. So, all entries about these loans should be removed from Mr J's credit file.

† HM Revenue & Customs requires Sunny to take off tax from this interest. Elevate Credit International Limited must give Mr J 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 J's complaint. Elevate Credit International Limited should put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 27 March 2020.

Claire Marchant-Williams
ombudsman