

complaint

Mr D says that Elevate Credit International Limited, trading as Sunny, lent to him irresponsibly.

background

Sunny approved one open ended (flex credit) account, and 26 payday loans for Mr D between April 2014 and December 2016.

Sunny had assessed the complaint and had decided that the flex credit account may not have been suitable for Mr D. It had offered to refund all interest and charges in relation to this account and amend his credit file accordingly.

Mr D brought his complaint to this service. He is represented by a third party.

Our adjudicator considered the complaint and his view was that Sunny should put things right for Mr D in relation to all but the first loan – Loans 2 to 27.

Our adjudicator noted that Loan 2 followed on from the flex credit account with a credit limit of £350. This had commenced in April 2014 and ran until November 2014. And so there had already been many credit advances before Loan 2 had been applied for which was in January 2015. And the flex credit account had been running for about eight months.

The other high-cost short term credit loans Sunny offered to Mr D were ones repayable over six months. Mr D had been given 26 loans many of which overlapped with at least one and often more than one other loan. So the effect was that Mr D was repaying multiple loans at the same time for about two years.

Sunny disagreed with the adjudicator's opinion so the complaint has been passed to me for a 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 on our website and I've taken this into account in deciding Mr D's case. So the detailed sets of regulations and the approach this service takes in relation to repeat lending of instalment loans has been set out in the published decisions and are not set out here.

This includes some of the provisions of the Consumer Credit Act including later amendments, guidance (such as the Office of Fair Trading Guide on irresponsible lending "OFT") and rules provided by the regulators (after 1 April 2014 the Financial Conduct Authority "FCA"), and industry codes of best practice.

Under this framework, in order to hold a consumer credit licence Sunny was obliged to lend responsibly. As clarified by the regulator Sunny needed to make a reasonable assessment as to whether or not a borrower could afford to meet its loan repayments in a sustainable manner. Neither the law nor the FCA specified how the assessment was to be carried out

but, whatever the method, it needed to be enough to assess the sustainability of the arrangement for the consumer.

It's important to note that this means the assessment needed to be consumer-focussed. It was not an assessment of the risk to the lender, but of the risk to the consumer. And it needed to be proportionate to both the circumstances of the lending and the circumstances of the consumer.

A lender's assessment of creditworthiness would need to be flexible – what was sufficient for one consumer might not be for another, or indeed what might be sufficient for a consumer in one circumstance might not be for the same consumer in other circumstances.

The FCA's rules applicable at the time Mr D was borrowing from Sunny, set out in its Consumer Credit Source Book (CONC), echo and refer back to sections of the OFT's Irresponsible Lending Guidance. The rules say that in assessing affordability a lender needs to consider what's appropriate in the circumstances for example "*the type and amount of credit being sought and the potential risks to the consumer.*"

It also clearly states that lenders should not refinance short-term loans where it would be unsustainable for the consumer or otherwise harmful for them.

I've decided to uphold Mr D's complaint and have explained why below.

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 D could repay his 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 Mr D'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.

There may come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Bearing all of this in mind, I think that there are three key questions for me to consider in order to fairly and reasonably determine Mr D's complaint. These questions are:

1. did Sunny each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay in a sustainable way? If not, would those checks have shown that Mr D would have been able to do so?
2. taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Mr D's indebtedness in a way that was unsustainable or otherwise harmful?
3. did Sunny act unfairly or unreasonably in some other way?

I've carefully thought about all of these questions and what they mean for Mr D's complaint.

Did Sunny each time it lent, complete reasonable and proportionate checks to satisfy itself that Mr D would be able to repay in a sustainable way? If not, would those checks have shown that Mr D would have been able to do so?

The first loan has been upheld by Sunny and so it is not in dispute. But it remains relevant as it forms part of the history of lending. And the flex credit account lasted for about eight months.

I haven't recreated individual, proportionate affordability checks for Loans 2 to 27 because I don't think that it is necessary to do so. I'll explain why this is the case in the next section.

Taking into account the short-term purpose of the loans provided, did the overall pattern of lending increase Mr D's indebtedness in a way that was unsustainable or otherwise harmful?

I've also looked at the overall pattern of lending. I've looked to see 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 lending.

Granting overlapping loans with combined repayments may not in itself necessarily be irresponsible. But, apart from being arguably more difficult to manage for the consumer, the fact that someone would ask for further credit having just taken out a loan should raise the question as to the intended purpose of the loans. And, depending on how long the lending relationship was at that point, this may be of concern to a responsible lender.

Given the particular circumstances of Mr D's case, I think that the point at which Sunny should reasonably have seen that further lending was unsustainable, or otherwise harmful was reached by Loan 2. I say this because:

- Sunny had already been extending credit to Mr D for eight months and the flex credit account was not run where Mr D took one drawdown and then repaid it back over a reasonable time. Mr D took several drawdowns over those months;
- Sunny has conceded that the flex credit account may not have been suitable for him;
- replacement of that with a number of overlapping instalment loans produces a similar effect to that experienced on a flex credit account – re-borrowing and repaying over longer periods of time;

I think that Mr D lost out because Sunny continued to provide borrowing from Loan 2 onwards because:

- these loans had the effect of unfairly prolonging Mr D's indebtedness by allowing him to take expensive credit over an extended period of time
- the sheer number of loans was likely to have had negative implications on Mr D's ability to access mainstream credit and so kept him in the market for these high-cost loans.
- the amounts Mr D was borrowing increased to £500 on many occasions, or the cumulative principal amount borrowed added up to figures around that – an example is January 2015 where Mr D took four instalment loans the total principal sums approved for Mr D added up to £650, and
- Sunny ought to have realised it was likely Mr D's indebtedness was increasing unsustainably; and
- Mr D was in effect paying large amounts of interest to service multiple debts over an extended period and it cannot be ignored that fresh principal sums lent may well have been used to repay the other outstanding loans Mr D already had with Sunny.

So I'm upholding Mr D's complaint about loans 2 to 27 because the overall pattern of lending increased his indebtedness in a way that was unsustainable or otherwise harmful and he lost out as a result.

Did Sunny act unfairly or unreasonably in some other way?

I've carefully thought about everything provided. Having done so, I've not seen anything here that leads me to conclude Sunny acted unfairly or unreasonably towards Mr D in some other way.

putting things right – what Sunny needs to do

As Sunny has already conceded in relation to the first advancement of credit – the flex credit account – then I include it here within the 'putting things right' section for ease of reference.

- refund all interest and charges Mr D paid on all of the loans – 1 to 27; and
- 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 payment information about the flex credit account from Mr D's credit file; and
- the number of loans taken from Loan 2 means any information recorded about them is adverse. So all entries about Loans 2 to 27 should be removed from Mr D's credit file.

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

my final decision

For the reasons I've explained, my final decision is that I'm upholding Mr D's complaint. Elevate Credit International Limited, trading as Sunny, should pay redress as I've set out above.

Under the rules of the Financial Ombudsman Service I need to ask Mr D to accept or reject my final determination on or before 19 April 2019.

Rachael Williams
ombudsman