

complaint

Miss K complains that Elevate Credit International Limited trading as “Sunny” was irresponsible when it provided her with 21 high-cost short-term instalment loans between June 2015 and April 2017.

background

Miss K took 21 loans with Sunny between 14 June 2015 and 10 April 2017. All the loans were to be repaid through six monthly instalments. The amounts of the loans varied between £50 and £800. I've prepared a table showing some of the information Sunny has provided about Miss K's loans. This can be found in the annex to this decision.

One of our adjudicators looked into Miss K's complaint and recommended that it be partially upheld. She didn't think that Sunny should've provided Loan 4 onwards to Miss K. Sunny doesn't agree so the matter has come to me for a final decision. If Miss K accepts my decision it will be binding on the parties.

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 Miss K could repay her 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 Miss K'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 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 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.

Sunny was required to establish whether Miss K could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation. Whilst that might be an indication a borrower could sustainably make their repayments, it doesn't automatically follow. This is because the relevant regulations define sustainable as meaning that a borrower could repay the loans over the term of the agreement without undue difficulties, on time, whilst meeting other reasonable commitments and without having to borrow to meet those repayments. And the regulations said that an assessment should take into account more than simply assessing the customer's ability to repay the credit.

With this in mind I've carefully considered all of the arguments, evidence and information provided and what this all means for Miss K's complaint. As neither party has disagreed with our adjudicator about her conclusions in relation to Loans 1, 2 and 3 I'm not going to consider those further except so far as they provide broader context to Miss K's borrowing relationship with Sunny.

Miss K began borrowing from Sunny in June 2015 – a loan of £150. As I've mentioned all her loans were due to be repaid over six months. But Miss K repaid Loan 1 after ten days. Less than three weeks later she returned to Sunny for Loan 2: this was again for £150. And again she repaid it early – after only 12 days.

Miss K's third loan was taken six days after she repaid Loan 2 and it was for more than double her earlier loans - £400. This also meant that her repayments were due to be significantly higher at almost £129 per month instead of around £48 per month for Loans 1 and 2.

Whilst early repayment of a loan may suggest that a consumer has the sustainable means to do this, a pattern of borrowing and repaying several loans one after the other suggests to me that the consumer's financial situation is not a stable one – after all, if they know they would have the means to repay a loan within a couple of weeks, why would they agree to repay over six months and thereby cost themselves a lot more in additional interest payments. This suggests to me that they are likely to be giving themselves some breathing space in a potentially volatile financial situation.

Miss K didn't repay Loan 3 within a couple of weeks as she had with Loans 1 and 2. In fact her pattern of borrowing and repaying early changed: seven weeks into Loan 3 Miss K borrowed Loan 4 – without repaying Loan 3. And this was for an even higher amount at £550. As she had two loans outstanding it meant she had two lots of repayments - totalling almost £295 per month.

At the point Miss K took Loan 4 she had declared that her monthly income had increased from £1,564 to £2,136. This is a significant increase but it doesn't seem that Sunny took any more steps to verify it than it had for the earlier loans. Additionally, Miss K's declared monthly expenditure on credit had reduced from £1,080 at Loan 1 to £604 by Loan 4. This meant that Miss K's stated disposable income (the amount she had left after she'd paid her declared expenditure and from which she would repay her loans) had more than trebled from £459 to £1,432. And yet here she was asking to borrow Loan 4 whilst Loan 3 was still outstanding. I think that Sunny should've been doing a full review of Miss K's financial circumstances at the point she took Loan 4. As it didn't I'm satisfied that it failed to do a proportionate check.

What Sunny did have was a history of lending to Miss K which in itself suggested that Loan 4 was unlikely to be repaid sustainably. And as such Sunny shouldn't have provided it to Miss K. This was her fourth advance in three months for the highest amount yet – whilst Loan 3 was still outstanding.

Miss K repaid Loans 3 and 4 on the same day. She paid Sunny a total of £904 to clear those two loans.

Eighteen days later Miss K applied for Loan 5 and was provided with a loan of £400. This was now her fifth loan in four months and as with Loan 4 it was unlikely she'd be able to repay this sustainably given the background. The indications were that Miss K was struggling financially - she was borrowing much higher sums (than she had at the beginning) in quick succession. That wasn't a sustainable situation.

Twelve days after taking Loan 5 - and before Miss K had made any repayments towards Loan 5 - she took Loan 6 for £550. This meant that the whole of the principal sums on both Loans 5 and 6 was outstanding - £950. And they were due to be repaid over the following six months at around £290 per month.

I've looked at this overall pattern of Miss K's lending history with Sunny and I think that at the point she took Loan 6, it should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Sunny should've declined further loans.

Miss K had taken out six loans within around 19 weeks – all of which were supposed to have run for six months. Each time she repaid her balance and so was “in the clear”, she returned a very short time later to borrow again. So, it was more likely than not Miss K had to borrow further to cover the holes left in her finances by the repayment of earlier loans.

Additionally the amounts Miss K was borrowing were generally increasing – and having borrowed £150 for Loan 1, Loans 4 and 6 were for £550. So Sunny ought to have known that Miss K was unlikely to be borrowing to meet a temporary shortfall in her income but to meet an ongoing need.

As Miss K wasn't making any real inroads to the amount she owed Sunny – it meant that she paid high rates of interest to, in effect, service a debt to Sunny over an extended period. I acknowledge that there was a gap of around 23 weeks between Miss K repaying Loan 20 and taking Loan 21. But before that she'd taken twenty instalment loans over the previous sixteen months. So I'm not persuaded that Sunny could be satisfied that Miss K's earlier cycle of reliance on short term credit had been broken during that gap – especially as Loan 21 was for £450 when her previous two loans had been for £200.

Overall, I'm satisfied that Sunny caused Miss K to lose out when it continued to lend to her in this unsustainable way because these loans had the effect of unfairly prolonging her indebtedness by allowing her to take expensive credit intended for short-term use over an extended period of time. And the number of loans, together with the length of time over which Miss K borrowed, was likely to have had negative implications on her ability to access mainstream credit and so kept her in the market for this type of high cost product.

So I'm also upholding Miss K's complaint about Loan 4 onwards and require Sunny to put things right.

putting things right

As Sunny should not have provided Miss K with Loans 4 to 21 (taken between 17 September 2015 and 10 April 2017) I require it to:

- refund all interest and charges Miss K paid on Loans 4 to 21;
- 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 Miss K'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 21 should be removed from Miss K's credit file.

* HM Revenue & Customs requires Sunny to take off tax from this interest. It must give Miss K 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 Miss K's complaint. I require Elevate Credit International Limited to put things right in the way I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss K to accept or reject my decision before 26 October 2019.

E J Forbes
ombudsman

Annex – table of the loans taken by Miss K from Sunny

Loan	amount borrowed	date loan taken	date loan repaid	monthly repayment amount
1	£150	14/06/15	24/06/15	£43.48
2	£150	12/07/15	24/07/15	£44.26
3	£400	30/07/15	26/09/15	£128.82
4	£550	17/09/15	26/09/15	£165.42
5	£400	14/10/15	25/01/16	£128.25
6	£550	26/10/15	25/01/16	£162.04
7	£100	01/02/16	07/03/16	£33.36
8	£200	17/02/16	07/03/16	£62.26
9	£150	19/03/16	01/04/16	£46.56
10	£50	25/03/16	28/03/16	£14.88
11	£100	20/04/16	07/05/16	£30.63
12	£150	23/04/16	06/05/16	£44.96
13	£250	28/04/16	06/05/16	£72.23
14	£250	27/05/16	28/05/16	£73.55
15	£300	27/06/16	05/07/16	£87.23
16	£700	13/07/16	03/08/16	£226.94
17	£800	12/08/16	28/10/16	£260.33
18	£150	26/08/16	01/09/16	£44.31
19	£200	15/09/16	28/10/16	£63.42
20	£200	26/10/16	28/10/16	£58.98
21	£450	10/04/17	05/05/17	£140.19