

complaint

Mr O complains about the short term loans he took out with Elevate Credit International Limited trading as Sunny. Mr O says that Sunny lent to him irresponsibly. He says that he had a problem with gambling and he was also in a debt management plan. He thinks that Sunny should've seen all of this and not lent to him.

background

Mr O took out 19 instalment loans between September 2016 and February 2017. Some of the information Sunny has given us is shown in the table at the end of this decision.

Sunny has looked at Mr O's complaint and said that it shouldn't be upheld. It said that it did appropriate checks before approving all 19 loans. And these checks showed that the lending was affordable. It says it did see some adverse information on the credit reports it looked at, so it approved lower loan amounts to Mr O because of this.

One of our adjudicators has looked at what Mr O and Sunny said. He thought Mr O's complaint should be upheld. He didn't think that Sunny had made proportionate checks for any of the lending. This is because Sunny's credit checks showed that before the lending Mr O had taken out a large amount of other short term credit. He thought Sunny should've looked into Mr O's financial situation further because of this.

Sunny didn't do this and he thought if it had then it wouldn't have approved any of the loans. This is because he didn't think that Mr O could afford the repayments. And Sunny would've seen this had it completed better checks.

Mr O agreed with our adjudicator. Sunny didn't agree with our adjudicator. It provided some further information about how it assessed whether the loans were affordable for Mr O. It also said that Mr O wasn't dependent on the loans as he borrowed for less than 12 months in total and there were breaks in the lending.

So as no agreement's been reached the complaint's been passed to me to me to issue 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. I've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

Having done so, I've decided to uphold Mr O's complaint. Having reviewed the evidence I have available, I think Sunny was wrong to have given Mr O loans 1 to 19. I'll explain why.

Before lending money to a consumer a lender should take proportionate steps to understand whether the consumer will be able to repay what they're borrowing in a sustainable manner. A lender should gather enough information for it to be able to make an informed decision on the lending. And the lending shouldn't adversely impact a consumer's financial situation.

The guidance and rules themselves didn't set out compulsory checks. But they are clear that any checks needed to be proportionate and could take into account a number of different things. This could include how much was being lent, the size of the repayments and what the lender found out about the consumer.

So I've firstly looked at whether Sunny performed proportionate checks. If I think that the checks were proportionate then it usually would've been reasonable for it to lend. But if Sunny didn't do proportionate checks, I've looked at whether it would've been apparent to it that the loan repayments were affordable had it done better checks. Sunny should put things right if it's likely to have then found that the loan repayments were unaffordable.

Sunny said the following about the checks it did before lending:

- it explained how it used the information Mr O provided, and the information it obtained from credit checks, to determine if the loans were affordable
- it provided the information it obtained from Mr O and the credit reference agencies
- it says it compared the information Mr O provided with national statistics to see if it was reasonable

And based on what it saw from this it thought it reasonable to lend to Mr O.

why I don't think Sunny's checks were proportionate for loans 1 to 19

As our adjudicator outlined, Sunny's credit checks showed that Mr O had taken a significant amount of other short term lending in the months before he started to apply for the Sunny loans. I agree that this was a high enough amount (over £11,000 in the last six months), for Sunny to have thought that Mr O may have been dependent on short term lending. Or that he had other, possibly longer term, financial problems.

So I think that it would've been proportionate for Sunny to have carried out a full review of Mr O's finances before approving any of the loans. And Sunny needed to verify the information it received where possible. This is so it could make sure Mr O was in a position to make the repayments sustainably.

I don't think Sunny did this. I can't see that it fully reviewed Mr O's finances at any time. It seems to have just relied on the information Mr O provided and the results of its credit checks. So I need to think about what I think Sunny would've seen if it had carried out proportionate checks.

what I think proportionate checks would most likely have shown

Mr O has provided some information about his financial circumstances. This includes a recent credit report and his bank statements. I accept that this isn't exactly what Sunny would've seen at the time. But I think it would've found out similar information if it had made proportionate checks, so I think it's reasonable to rely on it.

Firstly I think proportionate checks would've shown Sunny that Mr O was spending a substantial amount on gambling. He was spending over £1,500 a month at the early part of the lending. This increased to around £5,000 a month over the mid part of the lending, and up to over £10,000 at times when he took out the later loans.

Mr O seems to have been supporting this by taking short term loans with a number of other providers, as Sunny's credit file data shows these amounts were significant before he took out the Sunny loans. This continued going forward, with Mr O borrowing and repaying large amounts on a regular basis. He could borrow and repay over £3,000 a month at times, and sometimes this was nearer to £4,000. And Mr O was also, at times, taking longer term loans for larger amounts.

Sunny has said that Mr O only borrowed for a short period and there were breaks in the lending. There were some shorter breaks, as shown in my table below, but I don't think these are significant. And Mr O was taking these loans and repaying them very quickly. He ended up taking 19 loans in the five months he and Sunny had a lending relationship. This is a large amount over a short period. I think this was an indication that Mr O was potentially in financial difficulty.

I think that Sunny would've found out all of this information if it had made proportionate checks. And I think Sunny would've seen Mr O wouldn't have been able to repay the loans in a sustainable way. So I think that Sunny shouldn't have given loans 1 to 19 to Mr O and I think he's lost out as a result of this. So I'm upholding Mr O's complaint about loans 1 to 19.

what Sunny should do to put things right

To put things right for Mr O, Sunny should:

- refund all the interest and charges applied as a result of loans 1 to 19; and
- add interest at 8% per year simple on the above interest and charges from the date they were paid, if they were, to the date of settlement[†];
- remove any adverse information recorded on Mr O's credit file about these loans;

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

my final decision

For the reasons I've explained, I uphold Mr O's complaint.

Elevate Credit International Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr O to accept or reject my decision before 19 April 2019.

Andy Burlinson
ombudsman

information about the loans Mr O had

loan number	date started	amount borrowed	term (months)	date ended
1	03/09/2016	£100	6	05/09/2016
2	11/09/2016	£200	6	13/09/2016
3	18/10/2016	£500	6	21/10/2016
4	23/10/2016	£200	6	06/11/2016
5	25/10/2016	£200	6	06/11/2016
6	30/10/2016	£550	6	06/11/2016
7	14/12/2016	£300	6	15/12/2016
8	23/12/2016	£950	6	29/12/2016
9	26/12/2016	£100	6	29/12/2016
10	28/12/2016	£200	6	04/01/2017
11	01/01/2017	£200	6	04/01/2017
12	05/01/2017	£200	6	14/01/2017
13	07/01/2017	£200	6	14/01/2017
14	14/01/2017	£550	6	17/01/2017
15	17/01/2017	£100	6	18/01/2017
16	19/01/2017	£200	6	18/07/2017
17	22/01/2017	£750	6	18/07/2017
18	25/01/2017	£200	6	15/05/2017
19	04/02/2017	£50	6	15/03/2017