

complaint

Mr M complains that Elevate Credit International Limited trading as Sunny was irresponsible to lend him money.

background

Mr M took out five instalment loans with Sunny:

Loan application date	Amount of loan	Number of instalments	Amount of each instalment	Repaid?
17/11/2015	£1,500	14	£198.85	No
26/11/2015	£1,000	14	£142.06	No
03/01/2016	£200	14	£27.73	27/1/2016
07/2/2016	£300	14	£40.99	24/03/2016
26/03/2016	£400	14	56.92	No

The adjudicator recommended that Mr M's complaint be upheld in part. She thought that Sunny should've carried out more checks before agreeing loans one to three. But that even if it had, these loans would've still appeared affordable.

By loan four, the adjudicator thought Sunny should've been asking Mr M about his other short term lending commitments and by loan five, it should've tried to independently verify the financial information he'd given. With better checks, the adjudicator thought Sunny wouldn't have agreed loans four or five.

The adjudicator recommended that Sunny refund all interest and charges that Mr M had paid on loans four and five, together with simple interest at 8% on the refund. She asked it to write off any unpaid interest and charges on loan five and remove any negative information about the two loans from Mr M's credit file.

Sunny agreed with the adjudicator's recommendation. It said that across loans four and five, Mr M had borrowed £700 and repaid £391.79. So if offered to write off the remaining capital balance on loan five and remove any negative information about loans four and five from Mr M's credit file.

Mr M isn't happy with the proposed outcome. He can't understand why we think loans one to three were affordable when Sunny didn't check his finances in more detail. He says he had to borrow elsewhere to keep up with his repayments. And that we can see this from his bank statements.

Mr M points out that we've upheld some of his complaints about other lenders where the repayments were less than he was paying to Sunny.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

As Mr M is concerned that we've not considered the full picture, I think it might be helpful to deal this first. Sunny was required to lend responsibly. It needed to make checks to see

whether Mr M could afford to pay back each loan. These checks needed to be proportionate to things such as the amount he was borrowing, the length of the agreement and his borrowing history. But there wasn't a set list of checks Sunny had to do.

When Mr M asked for loan one he told Sunny he was earning £2,500 each month. Given the relatively modest proportion of his monthly income that the repayments represented, I think it would've been reasonable of Sunny to agree to lend based on this declared income alone.

When Mr M took out loan two, loan one was still running. So I think Sunny should've done a bit more to make sure he could afford both repayments. A proportionate check would've involved asking Mr M about his living expenses and regular credit commitments.

Although loans one and two were still running when Mr M asked for loan three, the monthly repayments were less than £28. So I wouldn't have expected Sunny to ask for more information than before agreeing loan two.

Sunny has given us evidence that it asked for details of Mr M's monthly income, living expenses, rent and regular credit outgoings before agreeing to lend. It also carried out credit checks.

Mr M didn't declare any credit commitments as part of his monthly expenditure but Sunny included some as part of its affordability assessment. Although it recorded a £364 loan repayment before agreeing loan one, Sunny missed about £200 of credit card payments. Then for loan two, it didn't add in the loan repayment that it had previously included. And for some reason, Sunny reduced some of the expenditure figures that Mr M gave to it, making it seem that he had more disposable income than he did.

I agree with the adjudicator that this means that Sunny's checks weren't entirely adequate. But even if I include the missing credit payments and use the actual expenditure figures that Mr M declared, the repayments on loans one to three appear affordable. Particularly as Sunny accounted for the repayments on loans one and two as part of Mr M's credit expenditure when he asked for loan three.

Although the credit checks Sunny carried out before agreeing loan one showed that Mr M had taken out short term loans in the past, he didn't have any active accounts. And it had been at least 18 months since he opened his last short term lending account. At the time of loan two, Sunny's credit check showed only one active short term loan account. So I don't consider Sunny missed any obvious signs that should've prompted it to ask questions about Mr M's other short term lending commitments or independently verify the financial information he gave.

I appreciate that Mr M's true financial situation around the time of these loans was worse than he declared to Sunny. He's also concerned that we've upheld some of his complaints about other short term lenders but not this all of this one. But I need to consider what proportionate checks were in all the circumstances of this particular complaint.

For all the reasons I've set out above, I don't consider proportionate checks would've revealed the extent of Mr M's financial difficulties around the time of loans one to three. Based on the information Sunny did or should've taken account of, loans one to three appeared affordable.

loans four and five

By loan four, Mr M had been borrowing regularly from Sunny, taking on a new loan while two earlier ones continued to run. I think Sunny should've been alerted to a possible dependency on short term lending. It would've been reasonable to expect it to ask about Mr M's other short term lending commitments before agreeing loan four. And by loan five, it should've been trying to independently verify the information Mr M had given about his finances.

Based on what I've seen, I think if Sunny had carried out proportionate checks before loans four and five, it would've decided that Mr M couldn't afford to take on further debt. That's because around loan four it would've realised that Mr M owed money to a number of other lenders. And by loan five, it would've seen he was gambling regularly as well.

The adjudicator's proposed resolution is fair and reasonable and in line with what I'd ask Sunny to do. But Sunny has offered to do more. It says it will write off the remaining capital balance on loan five. Generally we don't ask lenders to do that as the borrower has had the benefit of the money lent. I think this is a fair offer and what Sunny should do to resolve the complaint.

my final decision

My decision is that I uphold this complaint in part.

To put things right, I require Elevate Credit International Limited trading as Sunny.Co.Uk to:

- write off the remaining balance on loan five; and
- remove any negative information about loans four and five from Mr M's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 8 March 2018.

Gemma Bowen
ombudsman