## complaint

Mr H says Elevate Credit International Limited (Elevate), trading as Sunny Loans, irresponsibly lent to him.

## background

This complaint is about 30 loans Elevate provided to Mr H between March 2015 and May 2017. Mr H's history of borrowing from Elevate is attached to this decision.

Our adjudicator considered Mr H's complaint and felt that loans 1 to 3 should not be upheld. Mr H appears to have accepted this opinion, so I haven't considered these loans further. But I have considered all of the loans when considering Mr H's pattern of borrowing.

Our adjudicator upheld Mr H's complaint about loans 4 onwards and thought these loans shouldn't have been given. Elevate disagreed with the adjudicator's view, but it did agree it shouldn't have lent Mr H loans 24 onwards - so Elevate offered to uphold loans 24 onwards in line with our standard approach. Mr H didn't accept this offer, so the complaint has been passed to me to make a final decision.

## my provisional 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.

Elevate 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 H could repay the 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 the consumer'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 Elevate 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.

I think that it is important for me to start by saying that Elevate was required to establish whether Mr H 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 in particular 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 of the arguments, evidence and information provided in this context and what this all means for Mr H's complaint.

Elevate has told us that before agreeing to lend Mr H any of the loans it enquired about his income and expenses at the time to check if the loans were affordable for him. But our adjudicator felt, and I agree, that by loan 4 Elevate should've carried out more thorough checks of Mr H's financial situation. And that proportionate checks at this point would've uncovered that Mr H:

- was taking out short-term lending with other providers, and
- was consistently gambling significant sums of money.

This is likely to mean that Mr H may have had an issue with repaying his loans in a sustainable fashion. Gambling is highly likely to lead to debt. And with a debt situation arising out of, or contributed by, gambling, then a properly carried our affordability assessment was likely to lead to a responsible lender to conclude that the loan – or any subsequent ones - was not affordable for an applicant in that situation. And this coupled with the fact that Mr H had other short-term loans with other providers ought to have led to Elevate to realise that it shouldn't have lent Mr H any further loans. So, I'm upholding Mr H's complaint about loans 4 onwards on this basis.

Elevate have argued that there is a gap in the lending between loans 4 and 5 for about 4 months where Mr H was not tied into any lending agreement with it. I've considered this gap in lending but I don't think this is significant enough to create a break in the lending chain. So I think loan 5 and the further loans are all in the same chain for the purpose of considering Mr H's loan pattern.

I've looked at the overall pattern of Elevate's lending history with Mr H, with a view to seeing if there was a point at which Elevate should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so, Elevate should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Mr H's case, I think that this point was reached by loan 11. I say this because:

- At this point Elevate ought to have realised Mr H was not managing to repay his loans sustainably. Mr H had taken out 10 loans within 13 months. Despite a four-month gap in the lending in the early stages, Mr H continued to borrow over an extended period. And even though he paid off most of the loans early, he often took out another loan on the same day or within a few days of repaying the previous. So, Elevate ought to have realised it was more likely than not Mr H was having to borrow further to cover the hole repaying his previous loan was leaving in his finances.

- Mr H wasn't making any real inroads to the amount he owed Elevate and the amounts borrowed were not reducing significantly over this time. In fact, Mr H often took out more than one loan in a month. And although there were a number of times Mr M had been free of debt with Elevate, looking at the overall history of lending it is clear that Mr H was not borrowing to cover a short term financial difficulty, but in this case, to fuel his gambling addiction.

- Mr H paid back many of his loans early, and thus paid less in interest than he would've done if his loans had run to term. But nevertheless, over the period of borrowing Mr H had paid large amounts of interest to, in effect, service a debt to Elevate over an extended period.

Elevate says Mr H repaid many of the loans early, and therefore was not having problems managing money. It also provided evidence to show that as a result of repaying loans early the amount of interest Mr H paid back for each loan between loans 5 and 14 more or less reduced for each loan. So Elevate thinks this is evidence that Mr H was not reliant on short term lending.

I agree that Mr H paying these loans back early could be an indication that he was getting better at managing his money, but I don't think this is the case here. I say this because although some loans were paid back early, Mr H was taking out a new loan either before or shortly after settling the previous. So this suggests he was not financially stable after paying off any of his loans and so needed to borrow to fill the hole that repaying his loans caused. As I've also said above, Mr H often had more than one loan running with Elevate at a time, and there appears to be a pattern of borrowing in quick succession, paying off a number of loans early and then borrowing in quick succession again. I think Elevate should've looked carefully at Mt H's borrowing and ought to have realised that overall Mr H was not managing his finances without short term loans and was therefore reliant on this type of credit.

I think that Mr H lost out because Elevate continued to provide borrowing from loan 11 onwards because:

- these loans had the effect of unfairly prolonging Mr H's indebtedness by allowing him to take expensive credit intended for short-term use over an extended period of time.

- the number of loans and the length of time over which Mr H borrowed was likely to have had negative implications on Mr H's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So, I'm also intending to uphold the complaint about loans 11 onwards as I think by this point Elevate ought to have identified a pattern of repeat lending.

**putting things right – what Elevate needs to do**

- refund all interest and charges Mr H paid on loans 4 to 30**;**
- 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 loans 4 onwards from Mr H's credit file;
- the number of loans taken from loan 11 onwards means any information recorded about them is adverse. So, all entries about loan 11 should be removed from Mr H's credit file.

† HM Revenue & Customs requires Elevate to take off tax from this interest. Elevate must give Mr H 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 H's complaint. Elevate Credit International Limited should pay Mr H compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 13 March 2020.

Sienna Mahboobani
**ombudsman**

**HISTORY OF LENDING**

| Loan | Date taken out | Interest Paid | Date Repaid | Loan amount |
|---|---|---|---|---|
| 1 | 13/03/2015 | £38.40 | 25/03/2015 | £400.00 |
| 2 | 25/03/2015 | £28.00 | 01/04/2015 | £500.00 |
| 3 | 05/04/2015 | £76.00 | 24/04/2015 | £500.00 |
| 4 | 24/04/2015 | £112.00 | 22/05/2015 | £500.00 |

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|---|---|---|---|---|
| 5 | 30/09/2015 | £220.38 | 18/12/2015 | £500.00 |
| 6 | 06/01/2016 | £144.49 | 25/02/2016 | £400.00 |
| 7 | 26/02/2016 | £132.97 | 25/04/2016 | £300.00 |
| 8 | 09/04/2016 | £19.20 | 25/04/2016 | £150.00 |
| 9 | 19/04/2016 | £4.00 | 25/04/2016 | £100.00 |
| 10 | 25/04/2016 | £44.00 | 04/05/2016 | £550.00 |
| 11 | 09/05/2016 | £44.80 | 25/05/2016 | £350.00 |
| 12 | 10/05/2016 | £22.40 | 25/05/2016 | £200.00 |
| 13 | 25/05/2016 | £207.23 | 25/07/2016 | £550.00 |
| 14 | 28/06/2016 | £43.20 | 25/07/2016 | £200.00 |
| 15 | 26/07/2016 | £198.03 | 23/09/2016 | £550.00 |
| 16 | 25/08/2016 | £46.40 | 23/09/2016 | £200.00 |
| 17 | 23/09/2016 | £115.20 | 25/10/2016 | £450.00 |
| 18 | 10/10/2016 | £12.00 | 25/10/2016 | £100.00 |
| 19 | 25/10/2016 | £136.40 | 25/11/2016 | £550.00 |
| 20 | 25/11/2016 | £86.40 | 19/12/2016 | £450.00 |
| 21 | 26/11/2016 | £16.00 | 16/12/2016 | £100.00 |
| 22 | 19/12/2016 | £122.40 | 22/01/2017 | £450.00 |
| 23 | 03/02/2017 | £33.60 | 24/02/2017 | £200.00 |
| 24 | 21/02/2017 | £165.23 | 25/04/2017 | £350.00 |
| 25 | 24/02/2017 | £44.80 | 24/03/2017 | £200.00 |
| 26 | 24/03/2017 | £51.20 | 25/04/2017 | £200.00 |
| 27 | 25/04/2017 | £0.00 | 25/04/2017 | £250.00 |
| 28 | 26/04/2017 | £60.00 | 25/07/2017 | £250.00 |
| 29 | 08/05/2017 | £26.92 | 25/07/2017 | £200.00 |
| 30 | 12/05/2017 | £11.04 | 25/07/2017 | £100.00 |