

## **Complaint**

Mr C complains Elevate Credit International Limited (trading as Sunny) lent to him irresponsibly.

## **Background**

The background to this complaint, and my initial findings on it, can be found in my provisional decision which is attached to and forms a part of this final decision.

However, in summary, Sunny gave Mr C 26 loans between March 2017 and June 2018. I provisionally concluded that Sunny shouldn't have given him loans 9 to 26 because the pattern of lending suggested Mr C's borrowing was unsustainable by the point he applied for loan 9, and there was no or little improvement in his situation thereafter.

Mr C didn't respond to my provisional decision. Sunny replied to say that on reflection it thought it could have asked more questions of Mr C before agreeing loan 14 and said it would make an offer from this loan onwards, but it didn't agree with me that there was a pattern of unsustainable lending by loan 9. Its points could be summarised as follows:

- It had calculated that Mr C had enough disposable income to make his repayments towards loan 9. It took the same view for loans 10 to 13. On average Mr C only had to use 2% of his monthly income to make his monthly repayments on those loans.
- Mr C's good repayment record on loans 9 to 13 demonstrated these loans had been sustainable. And just because Mr C went on to borrow more loans from Sunny this didn't automatically mean he was doing so in order to repay his existing Sunny loans, nor that Sunny's assessment of affordability had been inadequate.
- My assumption that Mr C had a financial shortfall, or that this was caused by having to repay existing debt, wasn't supported by evidence.
- The nature of Sunny's product was that it allowed consumers to hold multiple loans at one time. Just because Mr C had taken nine loans in five months didn't mean that a pattern of unsustainable lending had developed. Indeed, five months was not long enough to establish such a pattern.
- There was no correlation between the amounts Mr C had repaid, and the amounts he then went on to borrow shortly after.

The case has now been returned to me to consider once again.

## **My findings**

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

I've thought about the additional points Sunny has made, but they don't change my decision and I still think it was wrong to give Mr C loan 9 onwards, for the same reasons I set out in my provisional decision. The FCA's rules say that financial businesses are supposed to learn from decisions made by this service, and I am aware that Sunny has received many final decisions on cases with similar circumstances to Mr C's, saying similar things to my provisional decision. Our approach to complaints like Mr C's is also set out on our website and has been for some time.

Against this backdrop I'm surprised Sunny has made the arguments that it has in response to my provisional decision, which are in many respects the same points it has made throughout Mr C's case, albeit expressed differently and in more detail. I'm also disappointed at the approach Sunny appears to have taken to Mr C's complaint in general. Sunny began by stating that it had not done anything wrong in granting all 26 loans. After our adjudicator upheld Mr C's complaint, it said it would make him an offer in relation to loans 22 to 26. Mr C didn't accept this offer, after which Sunny said it would improve its offer to include loans 18 to 21. When it received my provisional decision, it said it would also include loans 14 to 17.

In light of this series of slowly-improving offers I'm concerned that Sunny appears to view Mr C's complaint as a kind of bargaining exercise rather than an opportunity to achieve a fair and reasonable outcome.

### *The relevance of Mr C's disposable income as calculated by Sunny*

I acknowledge that Sunny carried out its own assessment of Mr C's disposable income before it granted him loans. It appears to have done this through a combination of self-reported income and expenditure figures, and by making enquiries of a credit reference agency. As I explained in my provisional decision, early on in a borrowing relationship less thorough checks into a borrower's ability to repay a loan might be proportionate, but there are certain factors which could suggest more thorough checks should be carried out. These factors include a borrower returning for loans soon after borrowing had been repaid, and having a large number of loans over a relatively short period of time. Both of these factors apply in Mr C's case and in view of them I don't think relying chiefly on Mr C's self-reported income and expenditure was proportionate, certainly by the time he had applied for his ninth loan. In any event, as I also explained in my provisional decision, establishing whether a borrower can sustainably repay their loans does not simply mean checking if they technically have enough money to make their repayments.

Overall I'm not convinced that Sunny's calculations of Mr C's disposable income are of much relevance here as I don't think its checks were thorough enough, certainly by the time Mr C applied for loan 9.

### *Mr C's repayment history and the reasons for his financial shortfall*

Repaying a loan on time is not necessarily a sign of financial health, although of course in a lot of cases it will be. But it's not a factor which should be considered in isolation, and it's important to remember that repayments should be *sustainable*. I explained in my provisional decision what is meant by this.

In my experience, repayment of lending followed very shortly by a request to borrow the same amount (or more) can be a sign that a borrower is not able to make their repayments in a sustainable way, and the more times a borrower repeats this behaviour, the higher the likelihood that this is the case. When Mr C applied for his ninth loan, this was the fourth time he had exhibited this borrowing behaviour. Sunny has questioned whether Mr C was coming back for more loans because repaying existing borrowing was causing a shortfall in his finances, or if there could have been some other reason. I think that whatever the reason for Mr C having a shortfall, it seemed to be occurring on a regular basis (suggesting he had a more serious, or long-term, underlying financial problem) and very shortly after he had repaid previous loans. I think this is suggestive of repayment of the earlier loans leaving Mr C short of funds to meet his other financial commitments, necessitating further borrowing to “top up” his finances. But even if I’m wrong and that’s not the case, Mr C was clearly running out of money on a regular basis, and high-cost short-term loans are not a suitable product for managing a persistent cash-flow problem.

*The lack of correlation between Mr C’s repaid loans and the loans he went on to borrow*

I think Sunny has missed the point here. As I understand it, Sunny has pointed to the fact that the loans Mr C took out after he had repaid existing borrowing, were not the same size. While this is true, I don’t see how this helps Sunny’s case: in general the loans (or groups of loans) Mr C took out were *larger* than the ones he had just repaid. Increasing borrowing over time is more likely to be a sign of a deteriorating financial situation than one which is improving.

*The length of time over which Mr C borrowed*

On this point, while I appreciate the point Sunny has made, I just don’t agree with it. I think five and a half months can be long enough for a pattern of unsustainable lending to be established, depending on the other factors which are present. I think in this case the way in which Mr C repeatedly came back for loans after having repaid previous borrowing was more important than the length of his borrowing relationship with Sunny, and in my view such a pattern can be established relatively quickly.

Overall, Sunny’s further points don’t change my decision and I remain of the view that it should not have given Mr C loans 9 to 26.

**How to put things right**

Sunny shouldn’t have given Mr C loans 9 to 26, so it’s not right that he should have had to pay interest, fees or charges on these loans, or have them affect his credit file in a negative way. So to put things right I direct Sunny to:

A) Add together the total of the repayments made by Mr C towards interest, fees and charges on these loans.

B) Calculate 8% simple interest\* on the individual payments made by Mr C which were considered as part of “A”, calculated from the date Mr C originally made the payments, to the date the complaint is settled.

C) Remove all outstanding interest, fees and charges from any outstanding balance Mr C still has, and apply the amounts calculated in “A” and “B” to repay this balance, paying the difference to Mr C.

D) The overall pattern of borrowing for loans 9 to 26 means any information recorded about them is adverse, so these loans must be removed entirely from Mr C’s credit file.

\*HM Revenue & Customs requires Sunny to deduct tax from this interest. Sunny should give Mr C a certificate showing how much tax it has deducted, if he asks for one.

### **My final decision**

For the reasons explained above, and in my attached provisional decision, I uphold Mr C’s complaint and direct Elevate Credit International Limited (trading as Sunny) to take the actions set out in the “How to put things right” section above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr C to accept or reject my decision before 17 April 2020.

Will Culley  
**Ombudsman**

**COPY OF PROVISIONAL DECISION****Complaint**

Mr C complains Elevate Credit International Limited (trading as Sunny) lent to him irresponsibly.

**Background**

Mr C took 26 loans with Sunny between March 2017 and June 2018. I've included some of the information we've received about the first 13 loans in the table below.

Loan	Date Taken	Date Repaid	Instalments	Amount	Highest Repayment
1	14/03/2017	05/06/2017	6	£500	£152.02
2	12/04/2017	28/04/2017	6	£50	£167.33
3	02/05/2017	05/06/2017	6	£100	£185.09
4	12/06/2017	30/06/2017	6	£50	£15.40
5	16/06/2017	01/09/2017	6	£400	£135.16
6	19/06/2017	30/06/2017	6	£50	£149.80
7	04/07/2017	31/07/2017	6	£50	£136.07
8	06/07/2017	31/07/2017	6	£150	£184.37
9	01/08/2017	01/09/2017	6	£250	£202.71
10	11/10/2017	31/10/2017	6	£100	£30.97
11	13/10/2017	31/10/2017	6	£100	£61.51
12	16/10/2017	31/10/2017	6	£150	£106.36
13	19/10/2017	31/10/2017	6	£150	£150.25

Loans 14 to 26 were taken between 5 December 2017 and 1 June 2018 and these ranged between £50 and £500. Many of the loans overlapped with one another. Mr C didn't fully repay loan 25 and balance remained outstanding when he referred his complaint to this service.

One of our adjudicators looked into Mr C's complaint. They thought that loans 6 to 26 shouldn't have been given to Mr C. Sunny disagreed with the adjudicator but has told us that it shouldn't have given Mr C loans 18 to 26. It says it will therefore pay Mr C a refund of the interest paid for loans 18 to 24 and loan 26 less Mr C's outstanding principal for loan 25, plus compensatory interest. Sunny says it will also remove these loans from Mr C's credit file.

Mr C hasn't accepted this offer, so the complaint has now been referred to me to consider.

**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.

Sunny had to assess Mr C's applications for borrowing to check if he could afford to pay back the amounts he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Sunny's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments and Mr C's income and expenditure. With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate.

But certain factors might suggest Sunny should have done more to establish that any lending was sustainable for Mr C. These factors include:

- Mr C having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- Mr C having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- Mr C coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

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

Sunny was required to establish whether Mr C could *sustainably* repay his loans – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr C was able to repay his loans sustainably. But it doesn't automatically follow that this is the case. The FCA's Consumer Credit Sourcebook ("CONC") states payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all of the arguments, evidence and information provided in this context, and thought about what this means for Mr C's complaint.

Our adjudicator thought Sunny should have realised by the time he applied for loan 6, that Mr C would have struggled to repay further loans in a sustainable way. Sunny said it didn't think this was the case. Having considered Mr C's borrowing history I agree that a responsible lender wouldn't necessarily have had reason to think he was unable to repay his loans sustainably at the point he applied for loan 6. I'll explain why.

Loan 6 was the sixth occasion in around 3 months that Sunny had lent to Mr C. The loan amounts varied during this period and there didn't appear to be an established pattern in the timing of the loans. Earlier loans were lent several weeks apart and, although loans 4 to 6 were taken out within a week of each other, which could have indicated that Mr C's underlying financial situation was deteriorating, I don't think there was quite enough evidence by this point to say that a pattern of unsustainable lending had become established. Considering what Mr C told Sunny about his income and expenditure, the loans would also have appeared affordable, and there was nothing in Sunny's credit checks which would have highlighted any other causes for concern.

Overall, I don't think the circumstances at this point should have given Sunny sufficient concern to decline loan 6, or think about whether it was reasonable to lend further loans.

In my view a pattern suggestive of unsustainable lending had become established however, by loan 9. This pattern involved Mr C repaying one or more of his loans, then very quickly replacing them with new loans of the same or similar amounts. For example, loan 3 (£100) was taken out four days after repayment of loan 2 (£50). Loans 4 to 6 (a total of £500) were then all taken out within a fortnight of repayment of loans 1 and 3 (a total of £600). And when loans 4 and 6 (each for £50) were repaid, loan 7 (£50) and loan 8 (£150) were then taken out within a week. Mr C then took loan 9 (£250) the day after he'd repaid loans 7 and 8.

In my experience, a pattern like this, once it has persisted for a while, is usually a strong indicator that borrowing has become unsustainable: repayment of existing debt leaves a shortfall in the borrower's

finances and, unable to meet their other financial commitments, they quickly borrow again. When Mr C applied for loan 9 he had now come back for borrowing very shortly after repaying earlier loans on four occasions over four and a half months and, bearing in mind the high-cost short-term nature of these loans, I think this was enough for Sunny to have realised Mr C was likely borrowing in an unsustainable way.

Sunny, in its response to our adjudicator, referred to gaps in Mr C's borrowing history. I can see that Mr C repaid loans 5 and 9 together and then didn't borrow again for about a month. A gap in borrowing can sometimes act as something of a "breathing space" for a borrower, but I'm unconvinced that a break of a month is enough in this case to challenge a reasonable assumption that Mr C's borrowing had become unsustainable and continued to be so. I note that when Mr C did begin borrowing again, he took four loans totalling £500 within eight days, and a similar pattern persisted throughout the rest of his relationship with Sunny. Indeed, any gaps in Mr C's borrowing, where he didn't have a loan outstanding with Sunny, became less frequent and shorter in length over time.

Overall, I think that by loan 9, Mr C's pattern of borrowing should have suggested to Sunny that he didn't just have a short-term cash-flow problem, but a persistent shortage of funds which he was borrowing in order to top up. High-cost, short-term loans of the kind offered by Sunny are not suitable for this kind of use. I think Sunny should have recognised that Mr C was likely using the loans in this way and not lent to him any of loans 9 to 26.

### **How to put things right**

Sunny shouldn't have given Mr C loans 9 to 26, so it's not right that he should have had to pay interest, fees or charges on these loans, or have them affect his credit file in a negative way. So to put things right I intend to direct Sunny to:

- A) Add together the total of the repayments made by Mr C towards interest, fees and charges on these loans.
- B) Calculate 8% simple interest\* on the individual payments made by Mr C which were considered as part of "A", calculated from the date Mr C originally made the payments, to the date the complaint is settled.
- C) Remove all outstanding interest, fees and charges from any outstanding balance Mr C still has, and apply the amounts calculated in "A" and "B" to repay this balance, paying the difference to Mr C.
- D) The overall pattern of borrowing for loans 9 to 26 means any information recorded about them is adverse, so these should be removed entirely from Mr C's credit file.

\*HM Revenue & Customs requires Sunny to deduct tax from this interest. Sunny should give Mr C a certificate showing how much tax it has deducted, if he asks for one.

### **My provisional decision**

For the reasons explained above, I intend to uphold Mr C's complaint and direct Elevate Credit International Limited (trading as Sunny) to take the actions set out in the "putting things right" section of this provisional decision.

I now invite both parties to reply to my provisional decision. They should make sure that any comments, evidence or arguments reach me by 18 February 2020. I will then review the case again.

Will Culley  
**Ombudsman**