Financial Ombudsman Service

complaint

Mr P complains that he obtained credit and took out loans with Elevate Credit International Limited (trading as Sunny) in 2014 and 2015. He says that he couldn't afford these loans.

Mr P also complains that it wasn't right for Sunny to pass his debts to a debt collection agency in May 2016.

background

Mr P applied to Sunny for credit four times between December 2014 and June 2015. I've used the information I have from Sunny to draw up a table which appears here.

Loan/account number	Date of agreement	Loan amount given (applied for)	Scheduled repayment amounts	Actual repayment amounts	Scheduled end date	Actual end
1 (revolving credit account	1 December 2014	Limit of £350. Drawn down £325 (225)	£32.89 per week = £142.52 per calendar month	Various with large payment of £166 at end	23 April 2015	6 March 2015
2 fixed sum 24 weeks	18 April 2015 (paid into account 20 April)	250 (350)	£18.89 per week from 23 April 2015 =£81.56 pcm	£18.89 on time and then 18 June 2015 paid £207.38 to close account	1 October 2015	18 June 2015
3 Fixed sum 24 weeks	11 May 2015	100 (100)	£7.85 per week from 21 May 2015 = £34.01pcm	regularly to 13 August 2015 then none until 10 Feb 2016.	29 Oct 2015	Debt sale 27 May 2016
4 Fixed sum for 6 months	26 June 2015 a few days after paying off loan 2	250 (200)	£83.39 from 31 July 2015	One on 1 August 2015 then none until 10 Feb 2016.	24 Dec 2015	Debt sale 27 May 2016

I've rounded the figures up or down to avoid using pence. The loans were to be repaid over several months and some ran concurrently.

Loan 1 in December 2014 was what Sunny described as an 'on-going, open-ended credit facility'. I notice that Mr P was given more than he asked for. Mr P drew £325 and a proposed schedule of repayments was drawn up over five months. Mr P had to pay around £143 each month (around £33 a week) and he paid it off early in March 2015.

Loan 2 was a fixed sum agreement for £250 (Mr P asked for £350), repayable over 24 weeks to around £82 a month (around £19 each week). He repaid it early in June 2015.

Less than a month after applying for Loan 2, Mr P asked for £100 - Loan 3. In August 2015 he wasn't able to make the regular payments of around £34 per month (around £8 a week). No further payments appear to have been made until 10 February 2016. The debt was sold to a third party in May 2016.

A few days after paying off Loan 2 early, Mr P applied for a fixed sum loan of £200 in late June 2015 - Loan 4. He was given a £250 loan and paid around £83 per month until August 2015. No further payments appear to have been made until 10 February 2016. The debt was sold to a third party in May 2016.

Mr P says that he entered a debt management plan in 2015. He says it was wrong for Sunny to transfer his debts to a debt collector when it was receiving payment.

Our adjudicator thought that the complaints about the loans shouldn't be upheld. And that Sunny hadn't been unreasonable in relation to the transfer of Mr P's debts to the third party. Mr P didn't agree with her view, and the complaints have been passed to me.

In January 2018 I came to a provisional decision (attached). I said I was planning to uphold Mr P's complaint for Loan 4. I didn't think it unreasonable that for Sunny sold the debts. I invited both parties to give me further information.

Sunny has said it has nothing to add. Mr P has said that he wants the defaults in relation to Loan 3 removed as well as Loan 4. He has sent me a copy email from him to Sunny asking it not to call his workplace again about the debt as this was embarrassing for him. I had already seen that email but I thank Mr P for sending it again.

my findings

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

So far as the Loans are concerned, as I've received nothing further in relation to the irresponsible lending parts of the complaint then I can see no reason to come to a different conclusion to my provisional decision. I uphold Mr P's complaint for Loan 4.

As for the transfer of the debts to a debt collector then I've received some more comments from Mr P and I address them here.

Sunny's contact with his work in August 2015 was likely linked to the fact that the collections team was involved by this point – around 21 August 2015. The Sunny notes I've seen say that after contact with Mr P's work it was told that Mr P 'wasn't available' or 'off for the week'. Within an hour of the second call, Mr P called Sunny on 24 August 2015 to tell it about the debt management plan and Mr P emailed Sunny to explain. It doesn't look like Sunny tried to get hold of Mr P at work again and so it acceded to his request to stop. It's not enough for me to think that Sunny had done anything wrong.

And even if I did think Sunny had done something wrong, this would not likely make a difference to the default process which took place several months later. From the case notes

I can see that Sunny issued default notice letters on 18 January 2016 requesting full repayment. I think it had shown patience until then which is what I'd expect when Sunny learnt that Mr P was using a third party to manage his debts.

Mr P's credit file tells me that these loans were defaulted on 15 February 2016. Mr P was aware for almost a month he needed to bring the account up-to-date and on notice about the default actions.

The Financial Conduct Authority (FCA) has rules about debt management and most of the relevant provisions are in part 8 of the Consumer Credit Sourcebook (CONC) which applied at this time. A debt management plan is more informal than other options open to Mr P. By entering the plan it doesn't mean that Mr P would've been shielded from any of his creditors starting an action to recover debts.

I don't know any of the details or arrangements as between Mr P and the manager of his debts. And in any event, I'm looking at whether I think Sunny did anything wrong. Any decision taken by Sunny to sell Mr P's debts to another company would have been a commercial decision made at the time and one I don't think I can interfere with.

Mr P's main concern is that he wishes to have the default on his credit file removed in relation to Loans 3 and 4. As my final decision is to uphold Mr P's complaint for Loan 4 the default in respect of that loan will be removed from his credit file as part of the redress for that. I don't uphold Mr P's complaint in relation to Loan 3 and I've no reason to think that Sunny did anything wrong when it decided to sell the debt to a third party in May 2016. So that default record will remain.

putting things right

I don't think Sunny should've agreed to give Mr P the loan that he took on 26 June 2015 (Loan 4). So it should:

- refund any interest and charges applied to the loan;
- add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement;*
- remove any adverse information on Mr P's credit file in relation to Loan 4.

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

It appears that Mr P still owes Sunny some of the principal balance he borrowed on Loans 3 and 4. Sunny may use the compensation that is due to Mr P to reduce this balance in a 'set off' arrangement. But that outstanding balance should be recalculated to remove any interest and charges, but taking account of any repayments Mr P has made on those loans as though they were applied against the principal sum borrowed.

There may still be a balance remaining after this deduction. If Sunny requires repayment of this balance it should agree an affordable repayment plan with Mr P.

If Sunny no longer owns the debt it isn't entitled to make any deductions from the amount it needs to pay Mr P.

my final decision

My final decision is I uphold his complaint in part and that Elevate Credit International Limited should put things right by doing as I have directed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr P to accept or reject my decision before 1 March 2018.

Rachael Williams
ombudsman

Extract from the provisional decision for Mr P.

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 taken into account the law, regulations and guidance applicable at the time, specifically the rules in chapter 5 of the Financial Conduct Authority in the Consumer Credit Sourcebook ("CONC").

I've looked at the information Sunny had – both information from Mr P and what it discovered through its own enquiries. Having done that, I've decided whether that information was proportionate and appropriate for each of the lending decisions.

Sunny has explained that it carried out creditworthiness checks, assessed Mr P's ability to make the repayments as they fell due, and looked at other debts he may have had. It also explained to Mr P in an email to him - "*Initial assessment of your application accounted for some of the adverse information held at the credit reference agencies and as a consequence you were offered a small amount of credit relative to your stated income.*"

Loan 1

This was Mr P's first credit application with Sunny. It knew Mr P's income, his rent and other monthly expenditure. It carried out fairly comprehensive checks. I've seen the report with the raw data and with the data explained.

This credit facility had a fairly long (five month) repayment schedule. Assessing whether Mr P was able to make the repayments for this loan is a requirement under CONC (5.2.1R (1), (2)).
I paraphrase the CONC requirements - Sunny had to assess whether this credit commitment would've had an adverse effect on Mr P's financial situation using information it was aware of. Sunny needed to get '*sufficient*' information from Mr P '*where appropriate*' and from a credit agency '*where necessary'*.

The extent of those checks ought to be proportionate to the particular circumstances: CONC 5.2.4G. The assessment was to include more than just Mr P's ability to repay but also that Mr P could achieve this in a sustainable fashion – that he could pay out of income or savings, without undue difficulties, and without having to borrow to meet those repayments: CONC 5.3.1G.

Ordinarily I'd expect that Sunny would've checked Mr P's income level and his expenditure such as normal costs of living and any regular financial commitments. I say this because the repayments were significant (about £143 a month) and were to be over a five month period.

Mr P's own figures given to Sunny demonstrate he would've had about £800 a month left after paying rent, and other outgoings including bills. Sunny's own checks on affordability have two elements. One of them is a relatively simple calculation of his income (£1,278) less a payment to a loan (which it had discovered through its own checks), his rent and other stated outgoings all of which added up to £542. This meant £736 would've been remaining. I understand that Sunny then chose to reduce this disposable income amount further (by about 20%) and hence its final figure for Mr P's disposable income was £589.

Sunny gathered additional information which showed Mr P had taken out short term loans ("STL") in the previous three years and still had over £1,017 outstanding on sector 1 type credit (loan and instalment credit). But its checks at this stage showed that despite this history Mr P had no STL open at that point in time and had had one open in the previous three months.

At this stage and in relation to this set of repayments I think that Sunny had sufficient information on which to assess Mr P's ability to repay and in a sustainable manner. It seemed he would be able to meet his monthly repayments out of his disposable income with money left over. So all in all I think that Sunny didn't need to do more.

Loan 2

By this time in April 2015, Sunny was able to use its own experience of Mr P as its customer. He'd repaid Loan 1 early. Mr P appears to have told Sunny that his income had increased.

Mr P appears to have given a lower amount for his outgoings. An example is that the earlier figure of £250 for rent was given this time as £0. This is odd and warrants further queries. Sunny doesn't appear to have asked Mr P about this directly. But I've looked at what else Sunny did do.

The additional checks Sunny did make were different to those done in December 2014. It didn't search for STLs. It did search for payday loans which are one particular sort of STL. Sunny says that it found none for Mr P.

The sum lent this time was £250. It meant that the repayment figures for Mr P were much less than those made for Loan 1 - about £82 a month (almost half). Sunny appears to have decided to lend to Mr P less than he'd asked for, and less than the credit facility limit it had agreed to a few months earlier (Loan 1).

I've seen from Mr P's bank statements that in April 2015 he was paid £1,279 which almost the exact figure Mr P had given Sunny in December 2014. So, using this figure, and if Sunny had chosen to use Mr P's earlier (larger) expenditure amounts, still the disposable income figures would've appeared satisfactory for a smaller monthly repayment figure of £82. And its own searches for payday loans had revealed nothing.

If Sunny had asked Mr P directly about any STL or payday loans in mid-April 2015 then Mr P would've been able to tell it about one other payday lender ("Lender 2") costing him about £84 each month. I can see from Mr P's bank statements he's given us that he paid Lender 2 on 30 March and 29 April 2015 which suggests a regular monthly commitment. Apart from this there were no other STL payments due around the time he applied for Loan 2.

So while I appreciate that Mr P may find this difficult to understand, I think that Sunny did all that I would've expected it to do for this amount of debt and at this stage of the relationship with him. And if it had asked Mr P for additional information about any STL commitments, which I don't think it needed to, then the facts were not likely to have made a difference when assessing affordability for this Loan 2.

I think that Sunny had sufficient information on which to assess Mr P's ability to repay. It seemed he would be able to meet his monthly repayments out of his disposable income with money left over. So all in all I can see that Sunny didn't need to do more.

Loan 3

This loan is the same sort as loan 2 – a fixed sum instalment loan. Mr P applied just a month after Loan 2 and the repayments for both loans would've overlapped. This was for a relatively small sum of £100. The end date was to be within a month of Loan 2 ending. So the combined repayment sums for Loans 2 and 3 would've been about £116 each month.

Looking at the picture overall, this £100 request by Mr P was a short time after he'd asked for £350 and had been granted £250. So the grant of this additional sum, in effect, took his indebtedness to Sunny up to that £350 amount which Sunny decided not to do in the previous month.

So the picture building was of a customer with a history of STLs who was repeatedly asking for loans. I think that further enquiries ought to have been made with Mr P himself at this stage. So an up-to date picture of Mr P's finances would've been appropriate.

Having looked at Mr P's statements, I've seen that between taking out Loan 2 and applying for Loan 3 (18 April to 11 May 2015) Mr P took one additional payday loan with a different lender ("Lender 3") to the one he already had outstanding with Lender 2 (referred to above).

Taking Mr P's expenditure at its highest (so including the rent figure of £250) and his new income of £1,343, the disposable income figure would've been about £849. Sunny's usual approach was to reduce this figure further (by about 20%) and so I've done the same. This means the figure Sunny would've used was about £679.

I've identified from Mr P's statements his other STL commitments which were outstanding at the time Sunny agreed Loan 3. I've reduced the figure of £679 by these sums which I've listed below. It seems that after paying everything Mr P would've been left with about £312. These reductions were:

£82	Sunny Loan 2
£84	Lender 2– monthly instalments which seem to have started in March 2015
£167	Lender 3's payday loan due (and paid) at the end of May 2015
£34	new Sunny Loan 3

So even with the additional checks I think Sunny ought to have carried out, I think that Mr P's additional information would've shown that he'd enough to be able to pay the new Loan 3 of around £34 a month. I don't think Sunny would have made a different lending decision. And so I don't think it lent irresponsibly at this point.

Loan 4

In late June 2015, Mr P applied for a £200 loan to be repaid over several months. He'd just completed paying off Loan 2 a few days earlier. Loan 3 was continuing. Sunny did lend him £250 and the combined repayments for Loans 3 and 4 would've been about £118.

This loan application meant that in seven months Mr P had asked Sunny for almost £1,000. Sunny had information that Mr P's monthly credit expenditure had increased a lot. So at this stage I think that further enquiries about the full extent of his STL commitments would've been reasonable. I don't think Sunny did this.

So I've looked at Mr P's statements, and I can see that Mr P had several ongoing credit commitments to other payday lenders as well as Sunny. These had increased a lot. My research into Mr P's statements, together with my calculations, show that he was due to pay around £960 to those lenders on 26 June 2015 which is the date he applied for Loan 4. This sum includes the £8 due for the Sunny Loan 3.

If Sunny had asked Mr P about his other short term lending it would've discovered these, and seen that the repayments he needed to make on his other loans took up a large proportion of his normal income. These repayments, together with the other expenditure that Sunny knew about, leads me to think that it would've realised Mr P couldn't afford to make the repayments on Loan 4.

Knowing Mr P's situation at the time I doubt that any responsible lender would've increased his credit commitments by lending further to him. I don't think Sunny's decision to lend would've been the same as the one it did make. So I think that it ought to put things right for Mr P in relation to Loan 4.

<u>transfer to debt collector</u>

Mr P says that Sunny was wrong to transfer his debt to a third party on 27 May 2016. He says that he was in a debt management plan ("DMP") and was trying to make minimum payments. So Mr P is complaining about the management of the account.

Sunny has sent to us a detailed list of the repayment dates, the text reminders sent to Mr P and the emails or telephone contact notes between it and Mr P. I've looked at these notes.

Sunny had a duty to be sympathetic and to try to accommodate Mr P in the circumstances he found himself. I can see evidence of Sunny doing that. An example is where Mr P informed Sunny in late August 2015 that a DMP company was handling his debts. He gave them the contact details and reference number for that DMP company. No payments appear to have been made for several months, and in late October 2015 Sunny contacted Mr P to discuss the DMP payments.

In November 2015 this DMP company made offers for the two outstanding accounts (Loans 3 and 4) but no payments were made until February 2016. I don't know the reason for this. Sunny sent Notices of Default under the agreements on 18 January 2016.

From February 2016 regular, but slightly different amounts, were received from that DMP company. In mid-May 2016 Sunny confirmed to Mr P that it had been receiving payments. Then eleven days later both outstanding debts were sold to a third party.

On the one hand I can see that Sunny had shown patience as it had received no payment from Mr P or the DMP company from August 2015 to February 2016. On the other hand I can see that it had started to receive regular payments four months before it chose to sell the debts.

As this is a provisional decision I invite both parties to give further details on this if they wish. At the moment I'm planning not to uphold this part of Mr P's complaint. On the information I have at the moment, I think that this was a commercial decision by Sunny and I don't think that to sell the debt was unreasonable.