

Complaint

Ms S says Elevate Credit International Limited (trading as Sunny) lent to her irresponsibly.

Background

This complaint is about 15 payday loans Sunny provided to Ms S between November 2016 and November 2017. I've set out some of the information we've received about these loans in the table below:

Loan	Date Taken	Date Repaid	Instalments	Amount	Repayment
1	28/11/2016	05/05/2017	6	£250.00	£69.74
2	30/11/2016	26/05/2017	6	£150.00	£110.44
3	06/02/2017	26/05/2017	6	£50.00	£124.50
4	31/03/2017	28/07/2017	6	£150.00	£171.21
5	10/05/2017	26/05/2017	6	£100.00	£129.40
6	29/05/2017	26/09/2017	6	£200.00	£108.36
7	08/06/2017	29/08/2017	6	£100.00	£138.02
8	30/06/2017	29/08/2017	6	£50.00	£144.77
9	31/07/2017	25/09/2017	6	£100.00	£137.46
10	29/08/2017	18/11/2017	6	£150.00	£140.55
11	25/09/2017	18/11/2017	6	£150.00	£156.68
12	26/09/2017	18/11/2017	6	£100.00	£125.92
13	31/10/2017	18/11/2017	6	£50.00	£141.48
14	23/11/2017	25/05/2018	6	£50.00	£16.00
15	24/11/2017	28/12/2018	6	£350.00	£128.00

Some of Ms S's loans overlapped with one another. Where this was the case, the "repayment" column includes the total of any overlapping repayments on loans outstanding at that point.

Our adjudicator upheld Ms S's complaint and thought the loans from 5 onwards shouldn't have been given. Ultimately, no agreement could be reached and the case has now been passed to me.

My 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 Ms S's applications for borrowing to check if she could afford to pay back the amounts she'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 Ms S'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 point to the fact that Sunny should have done more to establish that any lending was sustainable for Ms S. These factors include:

- Ms S 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);
- Ms S 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);
- Ms S coming back for loans shortly after previous borrowing had been repaid, or taking out multiple loans while existing balances were still outstanding (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 Ms S.

Sunny was required to establish whether Ms S could *sustainably* repay her loans – not just whether she technically had enough money to make her repayments. Having enough money to make her repayments could of course be an indicator that Ms S was able to repay her loans sustainably. But it doesn't automatically mean this is the case. The FCA's Consumer Credit Sourcebook ("CONC") states payments are sustainable if they're 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 carefully considered all of the arguments, evidence and information provided in this context and what this all means for Ms S's complaint.

Like our adjudicator, I think Sunny should have carried out more detailed checks for loan 4, and should have carried out much more detailed checks before agreeing loan 5 onwards. This is because a concerning pattern was emerging in Ms S's borrowing with Sunny, of her taking multiple loans at the same time. In my view this should have prompted a more thorough analysis of her financial situation before agreeing further loans.

I think detailed enough checks would have revealed, at the time of the loan 5 application, that Ms S was spending a high proportion of her income on gambling transactions and had been doing so for some time. In some months, Ms S spent more than her income in this way, and I think it was apparent that she was taking loans to fund this kind of activity. Had Sunny discovered this situation, as I think it should have, I don't think it would have considered it was responsible to agree loan 5 for Ms S, as borrowing in order to gamble is not a sustainable way of borrowing.

I've also looked at the overall *pattern* of Sunny's lending history with Ms S, with a view to seeing if there was a point at which Sunny should reasonably have seen from this pattern alone, that further lending was unsustainable, or otherwise harmful.

Given the particular circumstances of Ms S's case, I think that this point was reached by loan 6. I say this because Ms S's pattern of rapid re-borrowing and holding multiple loans at the same time was firmly established by this point. This meant Sunny ought to have realised it was more likely than not Ms S was having to borrow further to cover the hole repaying her previous loan was leaving in her finances and that her indebtedness was increasing unsustainably.

Taking a longer-term view of Ms S's borrowing from Sunny, it's also possible to see that she wasn't making any real inroads to the amount she owed. The same pattern of borrowing continued well beyond loan 6. Loan 15 was taken out 12 months after Ms S's first loan, and it was for a larger amount. So Ms S had paid large amounts of interest to, in effect, service a debt to Sunny over an extended period.

Ms S lost out because Sunny continued to provide borrowing from loan 6 onwards because:

- These loans had the effect of unfairly prolonging Ms S's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period of time.
- The large number of loans was likely to have had negative implications on Ms S's ability to access mainstream credit and so kept her in the market for these high-cost loans.

This means I think Sunny should go further to put things right in respect of loans 6 to 15 than it should for loan 5, by entirely removing the entries for these later loans from Ms S's credit file.

Putting things right – what Sunny needs to do

Sunny shouldn't have given Ms S loans 5 to 15. I direct it to do the following to put things right:

- A. Add together the total of the repayments made by Ms S towards interest, fees and charges on these loans, including payments made to a third party where applicable, but not including anything it has already refunded.
- B. Calculate 8% simple interest* on the individual payments made by Ms S which were considered as part of "A", calculated from the date Ms S originally made the payments, to the date the complaint is settled.
- C. Pay Ms S the total of "A" plus "B".
- D. Remove any adverse information it has recorded on Ms S's credit file in relation to loan 5. The overall pattern of Ms S's borrowing for loans 6 to 15 means any information recorded about them is adverse, so Sunny should remove these loans entirely from Ms S's credit file.

*HM Revenue & Customs requires Sunny to deduct tax from this interest. Sunny should give Ms S a certificate showing how much tax it's deducted, if she asks for one.

My final decision

For the reasons given above, I'm partially upholding Ms S's complaint.
Elevate Credit International Limited must now take the actions outlined in the section above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 1 September 2019.

Will Culley
ombudsman