

## **complaint**

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

## **background**

Between June 2015 and March 2016, Mr H borrowed 21 loans from Sunny. His borrowing history is set out in full at the appendix to this decision.

Sunny initially said it didn't agree that this service had power to look at the complaint as it believed Mr H had complained to us too late. However, it later accepted that the dispute had been raised in time. Just to be clear, I don't need to consider that matter further.

Our adjudicator initially thought that the complaint should be upheld in respect of loans 4 to 21. Sunny didn't accept that view. However, it agreed that the complaint should be upheld in respect of loan 17 onwards. Mr H did not accept that offer.

Another of our adjudicators then looked at the complaint. He said he thought it should be upheld in respect of loans 5 to 21. Neither party replied to our adjudicator's second view and so the matter has been passed to me to make a final decision.

## **my findings**

- (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 Sunny 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 the complaint.

As I said above, early in the lending relationship, I think Sunny was entitled to rely on the information Mr H provided to it. I can see that Sunny undertook a relatively simple credit check which showed that Mr H was not insolvent. It also checked his income and expenditure. From the figures provided, I can see how Sunny reasonably concluded that loans 1 to 4 were sustainably affordable.

However, by loan 5, I think Sunny should have asked more questions. This was the fifth loan Mr H had applied for in one month. And it came just three days after he'd repaid loans 1 to 3. Loan 4 was also outstanding. Looking at the nature of his borrowing, I think Sunny should have been on notice that Mr H may be struggling financially. At this stage, I think a proportionate check would have constituted a full review of his financial circumstances.

Had that review been undertaken, I think Sunny would have seen that Mr H's monthly expenditure generally exceeded his income. And he was making regular online gambling transactions. From loan 5 onwards, I think Sunny should have reasonably known that Mr H could not sustainably repay his loans.

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

Given the particular circumstances of Mr H's case, I agree with our second adjudicator that this point was reached by loan 10. I say this because:

- By now, Sunny ought to have realised Mr H was not managing to repay their loans sustainably. He had taken out 10 loans in less than three months. So Sunny ought to have realised it was most likely he was having to borrow further to cover the hole repaying his previous loan was leaving in his finances and that his indebtedness was increasing unsustainably.
- Mr H's first loan was for £200 and loan 10 was for £800. At this point Sunny ought to have known that Mr H was not likely borrowing to meet a temporary shortfall in his income, but to meet an ongoing need. He was regularly provided with a new loan within days of settling a previous loan.
- Mr H wasn't making any real inroads to the amount he owed. Loan 21 was taken out nine months after Mr H's first. And it was for a larger amount. Mr H had paid large amounts of interest to, in effect, service a debt to Sunny over an extended period.

I think that Mr H lost out because Sunny continued to provide borrowing from loan 10 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 Mr H borrowed was likely to have had negative implications on his ability to access mainstream credit and so kept him in the market for these high-cost loans.

So I'm also upholding the complaint about loans 5 to 9 and loans 10 to 21. Sunny must put things right.

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

- refund all interest and charges Mr H paid on loans 5 to 21.
- 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 5 to 9 from Mr H's credit file;
- the number of loans taken from loan 10 onwards means any information recorded about them is adverse. So all entries about loans 10 to 21 should be removed from Mr H's credit file.

† HM Revenue & Customs requires Sunny to take off tax from this interest. Sunny 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 partly upholding this complaint. Elevate Credit International Limited must put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 20 May 2020.

Nicola Bowes  
**ombudsman**

**APPENDIX**

| Loan | Date Taken | Date Repaid | Instalments | Amount |
|------|------------|-------------|-------------|--------|
| 1    | 03/06/2015 | 26/06/2015  | 6           | 200    |
| 2    | 13/06/2015 | 26/06/2015  | 6           | 250    |
| 3    | 19/06/2015 | 26/06/2015  | 6           | 100    |
| 4    | 29/06/2015 | 28/07/2015  | 6           | 250    |
| 5    | 01/07/2015 | 28/07/2015  | 6           | 100    |
| 6    | 04/07/2015 | 28/07/2016  | 6           | 100    |
| 7    | 03/08/2015 | 28/08/2015  | 6           | 200    |
| 8    | 09/08/2015 | 28/08/2015  | 6           | 100    |
| 9    | 15/08/2015 | 28/08/2015  | 6           | 100    |
| 10   | 30/08/2015 | 24/12/2015  | 6           | 800    |
| 11   | 03/09/2015 | 28/09/2015  | 6           | 150    |
| 12   | 28/09/2015 | 11/11/2015  | 6           | 250    |
| 13   | 28/10/2015 | 11/11/2015  | 6           | 300    |
| 14   | 19/11/2015 | 27/11/2015  | 6           | 100    |
| 15   | 08/12/2015 | 24/12/2015  | 6           | 300    |
| 16   | 12/12/2015 | 28/01/2016  | 6           | 250    |
| 17   | 01/01/2016 | 26/02/2016  | 6           | 550    |
| 18   | 08/01/2016 | 24/03/2016  | 6           | 250    |
| 19   | 28/01/2016 | 28/06/2016  | 6           | 450    |
| 20   | 29/02/2016 | 28/10/2016  | 6           | 600    |
| 21   | 24/03/2016 | 28/10/2016  | 6           | 300    |