

Complaint

Mr A complains that Elevate Credit International Limited (trading as Sunny) lent money to him that he couldn't afford to repay.

Background

Based on the information provided, Mr A entered into 21 instalment loans with Sunny between August 2017 and September 2018.

Loan	Date Taken	Date Repaid	Term (months)	Amount
1	22/08/2017	31/08/2017	6	£200.00
2	26/08/2017	31/08/2017	6	£100.00
3	03/09/2017	29/09/2017	6	£500.00
4	13/09/2017	29/09/2017	6	£400.00
5	15/10/2017	31/10/2017	6	£800.00
6	31/10/2017	30/11/2017	6	£900.00
7	30/11/2017	22/12/2017	6	£900.00
8	22/12/2017	19/01/2018	6	£900.00
9	21/04/2018	31/05/2018	6	£250.00
10	24/04/2018	28/04/2018	6	£100.00
11	27/04/2018	28/04/2018	6	£100.00
12	21/05/2018	29/06/2018	6	£250.00
13	27/05/2018	31/05/2018	6	£150.00
14	18/06/2018	31/07/2018	6	£250.00
15	24/06/2018	31/07/2018	6	£100.00
16	21/07/2018	31/08/2018	6	£150.00
17	24/07/2018	31/08/2018	6	£100.00
18	22/08/2018	01/11/2018	6	£200.00
19	25/08/2018	28/09/2018	6	£100.00
20	15/09/2018	01/03/2019	6	£350.00
21	17/09/2018	01/03/2019	6	£250.00

Mr A says that he had become dependent on payday loans and stuck in a cycle of debt. He says that had adequate checks been carried out Sunny would have realised that lending to him wasn't in his interest.

Sunny says that before the loans were provided it carried out eligibility, credit worthiness and affordability checks. It says that it provided 21 loans even though Mr A applied for 26 which shows it carried out checks as five loan applications were declined. It says that the information gathered through its checks resulted in Mr A meeting its lending criteria in regard to the 21 loans and so these were provided.

Sunny says that Mr A repaid some of his loans early and that Mr A didn't inform it that he was in financial difficulty at the time of the loans.

Our adjudicator didn't think that there was enough evidence to say that loans one to four shouldn't have been provided but she thought that loans five to 21 shouldn't have been lent.

By the time loan five was provided, our adjudicator thought that proportionate checks would have shown Mr A was having problems managing his money. She said that Mr A had a number of other short term loans outstanding at the time and Sunny should have realised at this stage that providing this loan and subsequent loans wasn't sustainable.

Our adjudicator thought that by loan six, Mr A's pattern of borrowing showed that he had become persistently reliant of short term borrowing and she didn't think this or subsequent loans should have been provided.

Sunny didn't accept our adjudicator's view. It said that the repayments due under the loans were on average equal to around 4.6% of Mr A's monthly income. It said that its product allows customers to take out up to four loans at a time to give them flexibility regarding the amount they borrow. It said that having multiple loans outstanding therefore wasn't evidence of the loans being unsustainable. It didn't accept that the loans provided were unaffordable.

Sunny said that there was no outstanding balance on Mr A's account.

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 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 that Mr A 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 Sunny should fairly and reasonably have done more to establish that any lending was sustainable for a consumer. These factors include:

- the *lower* a customer'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 Sunny was required to establish whether Mr A 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 Consumer Credit Sourcebook ("CONC"), defines 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 A's complaint.

Our adjudicator didn't think that there was enough to say that loans one to four shouldn't have been provided. Based on what I have seen I agree with this.

Loan five was for a much larger amount than the previous loans (£800). The four previous loans had been repaid before this loan was provided. As the previous loans had been repaid early, by the time Mr A was given loan five he had been borrowing from Sunny for just over two months. His monthly income had increased to £2,600 and the information gathered on his expenses suggested he had a disposable income of £1,174.

Given the increased amount and that this was the fifth loan in the lending chain I think Sunny should have carried out a thorough review of Mr A's financial circumstances to ensure the loan was sustainable. Had this happened, Sunny would have seen that Mr A had taken out multiple loans with other short term loan providers in the weeks before the loan was provided. Given he was taking out new loans while others were still outstanding, I think this should have raised concerns that Mr A was struggling to manage his money. Given this I think that had proportionate checks been carried out Sunny would have realised that this loan wasn't sustainably affordable.

Loan six was for £900 and again I think that had proportionate checks been carried out before this loan was provided Sunny would have realised that this loan wasn't sustainably affordable.

By the time loan seven was provided, I think that Mr A's pattern of borrowing showed that he had become persistently dependent on short term loans. This was his seventh loan in around three months and at this time the loan amounts were increasing. He took out loan three shortly after repaying loans one and two. He then took out loan five shortly after repaying loans three and four. Loan six was taken out on the day loan five was repaid. I think this suggests a pattern of new loans being taken out as previous loans are repaid. Loan seven was taken out the day loan six was repaid.

Although the loans taken out from loan nine onwards were for lower amounts than had been provided in some of the earlier loans, I do not find that this suggests that Mr A had reduced his dependency on short term loans. He was taking out overlapping loans and so, while the individual loan amounts were lower, the total amounts outstanding at any one time were much larger. Mr A's pattern of borrowing continued with new loans being taken out either before previous loans were repaid or shortly after.

Therefore I uphold this complaint in regard to loan five to loan 21.

My final decision

My final decision is that Elevate Credit International Limited should:

- A. add together the total of the repayments made by Mr A towards interest, fees and charges on all upheld loans, not including anything that has already been refunded.
- B. calculate 8% simple interest* on the individual payments made by Mr A which were considered as part of "A", calculated from the date Mr A originally made the payments, to the date the complaint is settled.
- C. remove any adverse information you have recorded on Mr A's credit file in relation to loans five and six. The overall pattern of Mr A's borrowing for loans seven to 21 means any information recorded about them is adverse, so all information about these loans should be removed from Mr A's credit file.

*HM Revenue & Customs requires tax to be deducted from this interest. Elevate Credit International Limited should give Mr A a certificate showing how much tax has been deducted, if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 27 December 2019.

Jane Archer
ombudsman