

complaint

Miss M complains that Elevate Credit International Limited (trading as Sunny) made short-term lending to her when it shouldn't have.

background

In 2015 and 2016, Sunny made 24 loans to Miss M. She later complained they'd been unaffordable for her.

our adjudicator's opinion

The adjudicator didn't recommend that the complaint should be upheld. She thought that - even it had done more checks before each loan - Sunny could've reasonably decided that its loans were affordable and they would've most likely still lent to Miss M.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Miss M and to Sunny on 22 May 2017. I summarise my findings:

I didn't think Sunny could reasonably have thought Miss M could afford its fifth loan.

If Sunny had made proportionate checks it wouldn't have made any of its later loans.

Subject to any further information from Miss M or from Sunny, my provisional decision was that I was minded to uphold this complaint in part. I intended to order Elevate Credit International Limited (trading as Sunny) to (in relation to its loans on and after 30 June 2015):

1. refund Miss M (or credit her account) for each amount of interest and charges she paid;
2. add simple interest at a yearly rate of 8% on each such amount, from the date Miss M paid it to the date Sunny refunds it. HM Revenue & Customs requires Sunny to take off tax from this interest. It must give Miss M a certificate showing how much tax it's taken off if she asks for one;
3. remove adverse information from Miss M's credit file.

Miss M agrees with the provisional decision.

Sunny says that it doesn't have any further information to add.

my findings

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

Before agreeing to lend to Miss M, Sunny had to check each time that she could afford to make the repayments. The checks had to be proportionate. There's no set list of proportionate checks. What's proportionate depends on things like – but not limited to – the size of the loan repayments and the information Sunny had about Miss M.

All Sunny's loans were repayable by six monthly instalments.

From its records, I think Sunny's loans were as follows:

loan number	date of loan	amount of loan	instalment	date fully repaid
1	15/01/2015	£400	£117.56	28/04/15
2	13/02/2015	£150	£44.39	28/07/15
3	12/03/2015	£100	£30.21	30/06/15
4	11/05/2015	£250	£76.23	18/08/15
5	30/06/2015	£250	£82.21	18/08/15
6	21/08/2015	£150	£50.05	10/09/15
7	25/08/2015	£200	£66.70	26/08/15
8	10/09/2015	£300	£91.55	21/09/15
9	20/09/2015	£150	£42.57	05/10/15
10	21/09/2015	£150	£50.04	27/11/15
11	12/10/2015	£250	£74.58	29/03/16
12	19/10/2015	£100	£28.55	28/10/15
13	10/11/2015	£150	£45.43	11/03/16
14	03/12/2015	£100	£31.78	22/02/16
15	24/02/2016	£100	£33.32	25/02/16
16	10/03/2016	£200	£60.36	09/07/16
17	13/03/2016	£150	£44.61	04/06/16
18	02/04/2016	£150	£48.49	06/04/16
19	07/04/2016	£150	£46.88	04/08/16
20	07/06/2016	£200	£62.60	27/07/16
21	13/07/2016	£150	£44.82	25/08/16
22	04/08/2016	£300	£95.73	not repaid
23	03/09/2016	£150	£48.27	29/11/16
24	11/11/2016	£150	£45.28	not repaid

From its file I accept that Sunny did credit checks.

And – before each loan - it asked Miss M about her monthly income and expenditure.

For the first ten loans, Sunny recorded Miss M's income as £1,400. It also recorded her normal monthly living costs. I find it likely that these figures came from Miss M.

By March 2015, she was committed to make repayments on each of the first three loans.

In late April 2015, Miss M paid off the first loan. In May she took out the fourth loan. So she again had three loans running.

But the total instalments were a bit less than before. And her figures showed that Miss M had more than enough disposable income to repay the first four loans – even though some of them overlapped. So I'm satisfied that Sunny did proportionate checks by asking Miss M her income and outgoings.

In late June 2015, Miss M repaid loan three. Loans two and four were still running. And she immediately took out loan five. For the first time, her repayments were going to be over £200 per month.

I think that – at this point – Sunny should've thought about the frequency of borrowing and the size of the repayments in relation to Miss M's earnings. I think this should've caused Sunny to do further checks.

I think proportionate checks – at that time - might've included not only asking Miss M about her income and outgoings, but also about any other short-term loans and for copies of documents such as payslips, bills or bank statements.

From the bank statements I've seen for May 2015 before Sunny made its loan in June 2015, I think that Miss M's net earnings were about £1,300.

Miss M was not directly paying household bills. But she was making informal contributions at about £100 that month. And she was paying for food for herself and her partner, at a cost of over £300 that month. Miss M was also paying for a mobile phone and for public transport. She also paid about £50 to a credit card provider.

Miss M was overdrawn even after she'd been paid. Her bank was returning payments and/or imposing extra charges – about £100 in May 2015.

So – unlike the adjudicator – I don't think Sunny could reasonably have thought Miss M could afford its fifth loan. I don't think she could afford it in a sustainable way – without further short-term borrowing.

And Miss M later started to take loans from other short-term lenders.

Bearing in mind her pattern of borrowing with Sunny, I think that – before its later loans - Sunny should've kept on making the same sort of checks I've mentioned in relation to the first five loans. If it had done so, I don't think it would've made any of its later loans.

Therefore I find it fair and reasonable to make orders in relation to the fifth and later loans. I will order Sunny to refund all interest and charges that Miss M paid, with interest at our usual rate.

As I think there are balances outstanding on loans 22 and 24, I will allow Sunny to apply the refund towards that, before paying the remaining refund to Miss M.

I will also order Sunny to remove adverse information from Miss M's credit file.

my final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I order Elevate Credit International Limited (trading as Sunny) to (in relation to its loans on and after 30 June 2015):

1. refund Miss M (or credit her account) for each amount of interest and charges she paid;
2. add simple interest at a yearly rate of 8% on each such amount, from the date Miss M paid it to the date Sunny refunds it. HM Revenue & Customs requires Sunny to take off tax from

this interest. It must give Miss M a certificate showing how much tax it's taken off if she asks for one;

3. remove adverse information from Miss M's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 17 July 2017.

Christopher Gilbert
ombudsman