

complaint

Mr W complains that Elevate Credit International Limited, trading as Sunny, gave him a loan that he couldn't afford to repay. The complaint is brought to this service on Mr W's behalf by a claims management company. But for ease, I shall refer below to all actions being taken by Mr W.

background

Mr W took out one loan for £1,000 from Sunny on 29 May 2016. The loan was repayable by 14 monthly instalments with a highest monthly instalment of £141.39. The loan was repaid in July 2017. Mr W said that he was dependent on payday loans. He had to borrow large sums of money from family to stay afloat.

our adjudicator's view

The adjudicator didn't recommend that the complaint should be upheld. She noted that Sunny had made a credit check and asked Mr W for his income and expenses. She noted that the credit check showed one default nine months previously and one active short term loan. She said that she hadn't seen anything from these results which she felt should've prompted Sunny to have completed additional checks. She also noted that Mr W had declared a disposable income of £775. So she thought that the loan repayments appeared affordable when compared to this.

Mr W disagreed and responded to say that he was dependent on payday loans. He'd had 46 loans in a 13 month period. His dependence on these loans stemmed from his gambling. He said that the payday loans would have shown on his credit file.

The adjudicator responded by noting that the 46 loans had been taken out between November 2011 and December 2012. This was around three and a half years before Mr W applied for his loan with Sunny, so she didn't think this was concerning at the time of his application. She also noted that Mr W was gambling at the time which was evident from his bank statements. But as this loan was Mr W's first and only loan with Sunny, she didn't think Sunny needed to verify the information Mr W had told it at that stage. She didn't think Sunny would've been aware of Mr W's circumstances unless he'd declared he was gambling.

Mr W responded to query whether Sunny's credit checks had shown his 46 loans, and if it had seen these, he said that warning flags should have been raised as to his dependence on payday lending. And he said that Sunny's lending with this history of dependence would have been irresponsible for any lender.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr W and to Sunny on 4 September 2018. I summarise my findings:

I noted that Sunny was required to lend responsibly. It needed to make checks to make sure Mr W could afford to repay the loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr W was borrowing, the length of the agreement and his lending history. But there was no set list of checks Sunny had to do.

I explained that the Financial Conduct Authority (“FCA”) was the regulator at the time Mr W borrowed from Sunny. Its regulations require lenders to take “*reasonable steps to assess the customer’s ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*” The regulations define ‘sustainable’ as being able to make repayments without undue difficulty, and that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

I didn’t think that the fact that Mr W was able to repay the loan in full necessarily meant it was affordable for him or that he’d managed to repay it in a sustainable manner. I also couldn’t assume that Mr W was able to do so out of his normal means without having to borrow further.

This was Mr W’s first loan with Sunny. I noted that Sunny said that before lending to Mr W, it had carried out a credit check and asked him about his monthly income and expenditure. It said that Mr W had told Sunny he earned £1,325 and his expenses were £550. So his disposable income was £775.

I’d seen a summary of the results of Sunny’s credit check. This showed that Mr W’s last default was nine months previously and the total value of his defaults was £3,021. It had been one month since his last delinquent account. The check also showed that Mr W had opened four short term loans in the previous three months and five short term loans in the previous six months. The total value of short term loans opened in the previous three months was £854, and the highest value short term loan in the previous three months was £297. The report also said that the total of Mr W’s regular payments on all active accounts was £340.

As Mr W had told Sunny he was spending £150 on credit commitments each month, I thought the results of the credit check might have suggested to Sunny that Mr W’s declared expenditure wasn’t accurate. And I thought the report built a picture of a customer with a history of delinquency and short term lending who was repeatedly asking for loans. So, I thought that Sunny should have been concerned about whether it knew enough about Mr W’s financial situation before lending to him, especially as Mr W was committing to making the loan repayments over 14 months. So I thought it would have been proportionate for Sunny to have asked some questions about what the credit checks showed. I couldn’t see that it did this.

Although I didn’t think the checks Sunny did were sufficient, that in itself didn’t mean that Mr W’s complaint should succeed. I also needed to see whether what I considered to be proportionate checks would have shown Sunny that Mr W couldn’t sustainably afford the loan.

As I’d said above, I thought Sunny needed to ask Mr W some questions about what the credit checks showed. So I’d tried to find out more about this by looking at Mr W’s bank statements for the month prior to the loan, to see what better checks would have suggested to Sunny. I could see that Mr W’s monthly income was £1,237.96, a little less than he’d declared. But, I also noted that Mr W received payday loans from other lenders totalling £1,300 which would have required payment around the same time as Sunny’s loan. So I could see that Mr W would have had no income to repay the loan after payment of his other payday loans. I could also see Mr W was paying a number of regular financial commitments as well as his normal living costs. So, if Sunny had carried out what I considered to be

proportionate checks before the loan, I thought it was likely that these would have suggested that the loan wasn't sustainable. So I thought Sunny was wrong to give Mr W this loan.

To settle the complaint, I thought Sunny should refund all the interest and charges that Mr W had paid on the loan, pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*, and remove any negative information about the loan from Mr W's credit file.

Subject to any further representations by Mr W or Sunny my provisional decision was that I intended to uphold this complaint and to order Elevate Credit International Limited, trading as Sunny, to:

1. Refund all interest and charges that Mr W paid on the loan;
2. Pay interest of 8% simple* a year on all refunds from the date of payment to the date of settlement; and
3. Remove any adverse information about the loan from Mr W's credit file.

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

Mr W responded to say that he accepted my provisional decision.

Sunny responded to say that it had no additional information to provide in response to my provisional decision.

my findings

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

Given that Sunny has given me nothing further to consider and Mr W accepts my provisional decision, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold the complaint and require Sunny to take the actions set out below.

my final decision

My decision is that I uphold this complaint. In full and final settlement of this complaint, I order Elevate Credit International Limited, trading as Sunny, to:

1. Refund all interest and charges that Mr W paid on the loan;
2. Pay interest of 8% simple* a year on all refunds from the date of payment to the date of settlement; and
3. Remove any adverse information about the loan from Mr W's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 17 November 2018.

Roslyn Rawson
ombudsman