complaint

Mr D complains about 14 instalment loans Elevate Credit International Limited (trading as Sunny) lent to him. He says the loans were lent irresponsibly.

background

From the information provided, Sunny lent Mr D 14 instalment loans between June 2015 and January 2018. The loan amounts varied from £50 to £600 and were typically due to be repaid in six equal monthly instalments. I've set out some of the loan information as an appendix at the end of this decision.

Mr D complained to Sunny through a third party representative about all of his loans. Sunny didn't uphold his complaint. It said it carried out proportionate checks before lending and so didn't do anything wrong. Unhappy with the response, Mr D referred his complaint to this service where it was looked at by one of our adjudicators.

Our adjudicator didn't recommend that loans 1 to 6 should be upheld but thought that by the time Mr D was lent loan 7, he'd formed a pattern of dependency on these loans and Sunny shouldn't have continued to lend to him.

Sunny didn't agree with our adjudication and so the complaint has come to me – an ombudsman for a decision. Since our adjudication there have been no further disputes about loans 1 to 6 and so my decision focuses on loans 7 to 14, the loans that remain in dispute.

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 on our website and I've taken this into account in deciding Mr D's case.

I've decided to uphold D's complaint in part and have explained why below.

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 Mr D could repay his each loan 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 Mr D'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 a lender should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These would include where:

- a consumer's income is low or the amount to be repaid takes up a substantial portion of their income
- the amount, or amounts, due to be repaid are higher
- there is a larger number and/or frequency of loans
- the period of time during which a customer has been provided with borrowing is long.

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Sunny has said that before it lent each loan, it checked Mr D's income and monthly expenses. It also searched Mr D's credit file including looking at his short term commitments at the time.

Mr D hasn't provided a copy of his credit file but from the results of Sunny's searches, I can't see that there was any adverse information recorded on his file such as defaults or county court judgements (CCJs).

I haven't recreated individual, proportionate affordability checks for loans 7 to 14 because I don't think that it is necessary to do so. I'll explain why this is the case.

I've looked to see if there was a point at which Sunny should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Sunny should have realised that it shouldn't have provided any further lending. Given the particular circumstances of Mr D's case, I think that this point was reached by loan 7. I say this because by loan 7, Mr D had now borrowed 7 loans in about four months. In that time, he'd taken out further loans while he had a loan outstanding. For example he hadn't repaid loan 1 when he took out loan 2. Loan 3 was for £600 and he took out loans 4 to 6 before he repaid loan 3. Sunny ought to have realised it was likely his indebtedness was increasing unsustainably.

Mr D wasn't making any real inroads to the amount he owed Sunny. As stated above, he was borrowing while he still owed previous loans and when he repaid, he was borrowing again quickly. Effectively, Mr D was paying large amounts of interest to service this debt over an extended period. He'd borrowed continually for more than two years. I think this should've alerted Sunny that Mr D may be using the loans to supplement his income and not using them for their intended purpose of temporary cash flow.

In response to our adjudication, Sunny has said there were two gaps in Mr D's lending. It said there were gaps between loans 8 and 9, and loans 9 and 10. I've considered these gaps carefully and I agree with the adjudicator. At the time Mr D took out loan 9, he hadn't fully repaid loan 8, so there was no break in the lending as he was still indebted to Sunny during the period. Turning to the gap between loans 9 and 10, Sunny had lent nine previous loans in the past 12 months and the break was a little less than five months. I think given the length of time that Mr D had been borrowing from Sunny and the fact that on more than one occasion he'd had more than one loan outstanding, I don't think this gap was sufficient to break the lending chain. I'm not satisfied that Sunny could reasonably believe that Mr D no longer needed to rely on these loans in that time. This is borne out by the fact when from loan 10 onwards, Mr D was borrowing or repaying loans almost on a monthly basis.

As Sunny continued to provide borrowing and I think that Mr D lost out because:

- these loans had the effect of unfairly prolonging Mr D's indebtedness by allowing him take expensive credit over an extended period of time,
- the sheer number of loans was likely to have had negative implications on Mr D's ability to access mainstream credit and so kept him in the market for these high-cost loans.

So I'm upholding Mr D's complaint about loans 7 to 14 because the overall pattern of lending increased his indebtedness in a way that was unsustainable or otherwise harmful and he lost out as a result.

putting things right – what Sunny needs to do

- refund all interest and charges Mr D paid on loans 7 to 14;
- 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*;
- the number of loans taken from loan 7 means any information recorded about them is adverse. So all entries about loans 7 to 14 should be removed from Mr D's credit file

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

my final decision

For the reasons I've explained, my final decision is that I'm partially upholding Mr D's complaint. Elevate Credit International Limited should put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 23 May 2019.

Oyetola Oduola
ombudsman

appendix

loan number	date taken	amount	date repaid
1	14/06/15	300	20/07/15
2	23/06/15	100	20/07/15
3	20/07/15	600	06/10/15
4	26/07/15	50	06/09/15
5	17/08/15	300	10/10/15
6	17/09/15	300	29/02/16
7	06/10/15	450	31/03/16
8	10/10/15	250	31/03/16
9	13/03/16	450	29/04/16
10	21/09/16	150	02/11/16
11	02/11/16	600	06/02/17
12	01/03/17	150	28/04/17
13	13/07/17	250	31/08/17
14	09/09/17	200	26/01/18