

## The complaint

Mr F says Shelby Finance Limited (trading as Dot Dot Loans) irresponsibly lent to him

## What happened

This complaint is about three instalment loans Shelby provided to Mr F between January 2021 and December 2021. Mr F's lending history is as follows:

Loan	Date Taken	Date Repaid	Instalments	Amount	Highest Repayment
1	02/01/2021	04/03/2021	9	£500	£107.88
2	14/03/2021	03/06/2021	9	£600	£130.03
3	17/12/2021	outstanding	9	£750	£161.22

There was a six month gap between Mr F repaying loan two and taking out loan three. So loan three can be reasonably regarded as the start of a new chain of borrowing. From what I can see, Mr F made one repayment for loan three and there remains an amount outstanding.

Our adjudicator upheld Mr F's complaint and thought none of the loans should have been given. Shelby disagreed and so the complaint was passed to me for a final decision. Shelby said it thought its checks showed that the loans were affordable and sustainable for Mr F.

## What I've decided – and why

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.

Shelby 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 F 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 Shelby should fairly and reasonably have done more to establish that any lending was sustainable for the 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 Shelby was required to establish whether Mr F 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 F's complaint.

Shelby asked Mr F for information about his income and outgoings and it carried out credit checks for each loan. The gap between loan two and three was significant and I think Shelby could reasonably consider loan three the start of a new chain of borrowing and carry out the affordability checks that were appropriate to that. So I think Shelby's affordability checks were proportionate and sufficient.

Mr F said his monthly income was between £2,500 and £3,500. Shelby verified this and established that Mr F earned about £2,500 a month. Mr F said his monthly outgoings ranged between £600 and £1,000. But Shelby thought this should be between around £925 to £1,699 a month across his borrowing.

Shelby also carried out credit checks and these showed that Mr F had active accounts for over £20,000 and loan and instalment accounts for between £16,068 and £25,155 during his borrowing from Shelby. Mr F also had significant defaults on his record from more than a year prior to his borrowing.

As our adjudicator explained, Shelby's credit checks for all the loans would have shown that Mr F's loan repayments added to Mr F's existing credit commitments would account for a significant proportion of his income. So Shelby, from its own checks, should have realised that Mr F would have been unable to meet his existing commitments without having to borrow again.

So I think Shelby should have realised that Mr F would be unable to sustainably repay his loans. And so I think it was wrong to have provided all of them.

### **Putting things right**

In deciding what redress Shelby should fairly pay in this case I've thought about what might have happened had it stopped lending to Mr F from loan one, as I'm satisfied it ought to have.

Clearly there are a great many possible, and all hypothetical, answers to that question.

For example, having been declined this lending Mr F may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, he may have looked to borrow the funds from a friend or relative – assuming that was even possible.

Or, they may have decided to approach a third-party lender with the same application, or indeed a different application (i.e. for more or less borrowing). But even if he had done that,

the information that would have been available to such a lender and how they would (or ought to have) treated an application which may or may not have been the same is impossible to now accurately reconstruct. From what I've seen in this case, I certainly don't think I can fairly conclude there was a real and substantial chance that a new lender would have been able to lend to Mr F in a compliant way at this time.

Having thought about all of these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr F would more likely than not have taken up any one of these options. So it wouldn't be fair to now reduce Shelby's liability in this case for what I'm satisfied it has done wrong and should put right.

I require Shelby Finance Limited (trading as Dot Dot Loans) to:

- refund all interest and charges Mr F paid on loans one to three;
- 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†;
- offset any refund against any balance of principal still owing for loan three and agree an affordable repayment plan to clear any balance remaining;
- remove any negative information about loans one to three from Mr F's credit file.

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

### **My final decision**

For the reasons given above, my final decision is that I uphold Mr F's complaint. I require Shelby Finance Limited (trading as Dot Dot Loans) to carry out the redress set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr F to accept or reject my decision before 6 June 2022.

Phillip Berechree  
**Ombudsman**