

The complaint

Mr O complained that Shelby Finance Ltd trading as Dot Dot Loans lent to him irresponsibly and provided him with loans that were unaffordable.

What happened

Dot Dot Loans provided loans to Mr O as follows:

Loan	Date Taken	Date Repaid	Monthly Instalments	Loan Amount	Monthly Repayment
1	13/07/2020	29/01/2021	6	£400	£129.34
2	16/03/2021	04/06/2021	6	£200	£64.98
3	19/08/2021	31/01/2022	3	£150	£81.50

Mr O said Dot Dot Loans provided the loans when he was already in a spiral of unaffordable short-term borrowing and that a proper check of his financial history would've have shown that this lending was unaffordable for him.

One of our adjudicators looked into the complaint. She didn't think she'd seen enough to say that Dot Dot Loans shouldn't have provided loans 1 and 2, but she didn't think loan 3 should have been provided as it should've found out about the extent of his other lending and realised that it wasn't sustainably affordable for him.

Dot Dot Loans didn't agree with the adjudicator's assessment. In brief summary, it mainly said that Mr O's outstanding credit amount wasn't unreasonable, there were no serious black marks on his credit history, his income details had been checked and, when assessing affordability, his likely expenditure was boosted to bring it in line with statistical averages. It also pointed out that loan 3 was for less than half the value of loan 1 and smaller than the previous loan and said that for a £150 loan, its checks were proportionate.

The complaint came to me to decide. I issued a provisional decision.

What I said in my provisional decision

Here are some of the main things I said.

"Dot Dot Loans needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice, this means that it should've carried out proportionate checks to make sure Mr O 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 borrower'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 a lender needs to keep in mind the overall picture and certain factors could point to the fact that Dot Dot Loans should fairly and reasonably have done more to establish that any lending was sustainable for the borrower."

Dot Dot Loans was required to establish whether Mr O 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 borrower could sustainably make their repayments. But it doesn't automatically follow this is the case. This is because the relevant regulations define 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.

Taking all this into account, I've carefully considered all of the arguments, evidence and information provided and thought about what this all means for Mr O's complaint.

Looking at the first two loans, I agree with the adjudicator that it wasn't wrong for Dot Dot Loans to give Mr O these loans. And as Mr O seems happy to accept what our adjudicator said about these loans, I don't think that I need to say more about them.

Dot Dot Loans told us about the checks it did before lending loan 3 to Mr O. It asked him to provide details of his income and to tell Dot Dot Loans what he normally spent each month. And Dot Dot Loans also carried out checks on Mr O's credit file.

Like our adjudicator, I don't agree that Dot Dot Loans made a fair lending decision when it provided loan 3 to Mr O. Here's why I say this.

Based on what Mr O had told Dot Dot Loans about his financial situation, Dot Dot Loans understood that he had ample disposable income of around £760 each month. But it could see that during the period it had been lending to Mr O his total indebtedness had been rapidly increasing. His outstanding credit commitments had gone up from around £2,100 when he took out loan 1 to over £8,000 by the time he was applying for loan 3 just 13 months or so later, despite the fact that Dot Dot Loans recorded a rise in his monthly income over the same period (now £2,000, up from £1,800 when he took loan 1 and £1,900 when he applied for loan 2).

I think this was worrying information, especially bearing in mind that Mr O had been in his job throughout and he was living with his parents with only limited responsibility for all the usual household expenses. Given Mr O's apparent escalating need for expensive credit, I think Dot Dot Loans should've realised that the information it had gathered suggesting that Mr O had substantial (or any) disposable income was significantly at odds with what its credit checks showed. To my mind, this should've alerted Dot Dot Loans to the risk that it couldn't safely rely on what Mr O had told it about how he spent his money as I think he had unexplained levels of debt.

I think all this information should've prompted Dot Dot Loans to carry out more thorough checks into Mr O's financial situation before agreeing to lend. Dot Dot Loans should have taken steps to verify what Mr O was saying about his financial circumstances as it was evident that it had contradictory information in front of it and what Mr O had declared wasn't reflected in other information Dot Dot Loans had gathered. Dot Dot Loans hasn't shown me it did this. So I can't fairly say that it carried out a proportionate check before agreeing to lend to Mr O.

This means I need to think about what it's likely Dot Dot Loans would have found out had it done what I consider would've been proportionate checking when Mr O applied for loan 3.

Mr O provided his bank statements to us so I've looked through these to see what Dot Dot Loans was likely to have found out. In the absence of other evidence, I think these give a useful insight into Mr O's finances at the time and had Dot Dot Loans looked in more depth at Mr O's finances it would likely have seen that he was facing serious problems managing his money.

I say this because if Dot Dot Loans had gained a better understanding of Mr O's finances and his use of credit, it would have seen that Mr O had an established record of taking out short-term loans and in the months running up to Mr O applying for this loan that he had been in a cycle of borrowing-repaying-borrowing again from multiple other short term lenders. During the month or so running up to him applying for loan 3, he took out new loans ranging between £150 - £400 with six other lenders. And, on top of this, when he applied for loan 3 he was already making repayments to at least six other providers of short-term loans and high cost credit.

Like our adjudicator, I think this pattern of borrowing strongly suggests Mr O was already having serious money problems and he depended on taking out new credit to supplement his income in order to repay his existing credit commitments. It is apparent from looking at his bank statements that Mr O didn't have the amount of disposable income that Dot Dot Loans' income and expenditure calculations suggested, or indeed any spare cash at all – all the signs are that his finances were under significant stress.

To my mind, Dot Dot Loans should've realised that Mr O was not in a position to sustainably make the loan repayments of around £81 each month over the next three months, given that he seemed to be already over-stretched financially. It follows that I don't think Dot Dot Loans should have agreed to provide this loan to Mr O in these circumstances.

So I'm planning on upholding the complaint about loan 3.

I hope that setting out my reasons as I've done helps explain more clearly why it's fair and reasonable to uphold this complaint and I invite Dot Dot Loans to reconsider its position in light of what I've said above.

Although I'm mindful that Mr O has told us he's unhappy about the way Dot Dot Loans has handled his complaint, I've concentrated in my decision on his unaffordable lending complaint and based on everything I've seen so far, I consider that the redress I've set out below is fair and reasonable."

What the parties said in response to my provisional decision

Mr O told me has has nothing further to add and Dot Dot Loans has said it accepts my provisional decision. So I think it's reasonable for me to proceed with my review of this complaint.

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. I've taken this into account in deciding this complaint.

I'd like to thank both parties for all the information that has been provided about this matter and I'm grateful to Dot Dot loans for responding so promptly to my provisional decision and confirming acceptance. Given that I've not received any further evidence or comment that changes my mind about this complaint, I now confirm the conclusions I reached in my provisional decision.

Putting things right

In deciding what redress Dot Dot Loans should fairly pay in this case I've thought about what might have happened if it hadn't provided lending to Mr O, 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 O 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, he 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 now impossible to reconstruct accurately.

From what I've seen in this case, I 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 O 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 O would more likely than not have taken up any one of these options.

So it wouldn't be fair now to reduce Dot Dot Loans' liability in this case for what I'm satisfied it has done wrong and should put right.

For loan 3, Dot Dot Loans should do the following:

- add up the total amount of money Mr O received as a result of having been given this loan. The repayments Mr O made should be deducted from this amount.
- If this results in Mr O having paid more than he received, then any overpayments should be refunded along with 8% simple interest* (calculated from the date the overpayments were made until the date of settlement).
- If any capital balance should remain outstanding then Dot Dot Loans should attempt to arrange an affordable/suitable payment plan with Mr O (it's my understanding that this loan was repaid in which case this won't apply).
- remove any negative information recorded on Mr O's credit file regarding this loan.

*HM Revenue & Customs requires Dot Dot Loans to deduct tax from this interest. Dot Dot Loans should give Mr O a certificate showing how much tax has been deducted if he asks for one.

My final decision

I uphold this complaint and direct Shelby Finance Ltd trading as Dot Dot Loans to take the steps I've set out above to put things right for Mr O.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 20 June 2022.

Susan Webb
Ombudsman