

## **The complaint**

Mr S complains that Shelby Finance Ltd trading as Dot Dot Loans lent to him irresponsibly.

## **What happened**

In May 2021, Mr S applied for and received a loan of £4,000 from Shelby. It was to be repaid in 48 monthly instalments of £187.72 at an Annual Percentage Rate (APR) of 59.7%, so the total repayable was £9,010.56. Using the services of a claims management company (CMC), in March 2022, Mr S complained to Shelby saying he felt the loan was unaffordable and it had put him in more debt.

Shelby looked into his complaint. It said it had carried out its usual assessment checks including reviewing Mr S's credit file and asking him about his income and expenditure. Ultimately it was satisfied that the loan had been affordable for Mr S at the time.

Mr S didn't accept what Shelby said and referred his complaint to our service. One of our investigators looked into it. Our investigator felt that Shelby's checks on Mr S's application hadn't gone far enough. If it had done more, he said Shelby ought to have identified that Mr S wasn't in a position to take on a new credit commitment. He asked Shelby to put matters right for Mr S. Mr S agreed with our investigator, but Shelby didn't.

As there was no agreement, the complaint has been passed to me for a decision.

## **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 approach to complaints about high-cost credit on our website – including the key relevant rules, guidance, good industry practice and law. I've considered this approach when deciding this complaint.

Shelby needed to carry out reasonable and proportionate checks to ensure that it didn't lend to Mr S irresponsibly. With that in mind, I think there are key questions I need to consider so I can decide what is fair and reasonable in the circumstances of this complaint:

- Did Shelby carry out reasonable and proportionate checks to satisfy itself that Mr S was in a position to sustainably repay the loan?
- If not, what would reasonable and proportionate checks have shown at the time and did Shelby make a fair lending decision?
- Did Shelby act unfairly or unreasonably towards Mr S in some other way?

Shelby had ensure Mr S would be able to repay the loan sustainably. It's not about Shelby assessing the likelihood of it being repaid, but it had to consider the impact of the loan repayments on him. There is no set list of checks that it had to do, but it could take into account several different things such as the amount and length of the loan, the amount of the monthly repayments and Mr S's overall circumstances.

### Did Shelby carry out reasonable and proportionate checks?

Shelby is correct to say it followed its usual process in assessing Mr S's application for the loan. But it's not just about following the process that's important, it must consider the information it finds to reach a fair decision.

In this case, Shelby looked at Mr S's credit file and it has provided evidence to us of what it found. Given the type of lender Shelby is, it would often expect to see defaults, County Court Judgments or repayment plan on a credit file; there were none for Mr S. But I think there were other signs which ought to have led it to ask further questions before agreeing to lend to him.

Mr S was asking for £4,000 for four years at a high rate of interest. If Mr S's circumstances were as under control as Shelby appears to be suggesting when it says there were no adverse indications on his credit file, I expect he'd have been able to obtain cheaper finance elsewhere. Looking closely at his credit file, I can see he had approximately £16,000 of credit already. That in itself may not be any particular concern, but I've looked at the type of credit, how it was used and when it was taken.

Mr S had six credit cards or similar facilities, all of which were running at or very slightly under the credit limits. He'd taken two of them within three months of this loan application and had used the combined limits of £1,100 almost immediately. He had a hire purchase agreement which he'd taken within six months of this application for around £13,500. While he was up to date with his payments on all the agreements, his credit wasn't reducing at all. The five payments he'd made to his HP agreement had in effect been paid by the two new facilities he'd taken since.

Mr S was asking for the £4,000 for vehicle repairs. There was no element of consolidation. So by agreeing the loan, Shelby was significantly increasing his indebtedness when his financial circumstances already appeared to be under strain.

I think Shelby ought to have recognised the difficult situation Mr S was getting in to and asked further questions so it could properly understand his financial circumstances. I don't think it was enough on this occasion to rely on electronic verification of money paid into his account and statistical averages for his expenditure. It follows that I don't think the checks it carried out were reasonable and proportionate.

### What would reasonable and proportionate checks have shown at the time and did Shelby make a fair lending decision?

I've already said there is no prescribed list of checks a lender should carry out. But in the circumstances I've set out above, I think it would have been sensible for Shelby to have obtained further information from Mr S regarding his income and expenditure to ensure he could afford the loan. It may have done this by, for example, asking Mr S for copies of his bank statements which would show how he used his money and how much income he received.

Mr S has provided us with copies of his bank statements. I can see that he earned in the region of £1,500 a month – around £500 less than he'd declared to Shelby (and it says it had verified electronically). He was regularly receiving money into his account from a short-term lender which may have been what caused the discrepancy in the income levels Shelby could see compared to his earned income. Furthermore, he was regularly gambling and going overdrawn on his current account.

From the evidence I've seen and described above, I think Mr S had started to get into financial difficulties. Given Mr S had recently taken on significant levels of credit and appeared to be getting into financial difficulties – this loan was only going to make things worse for him. I think Shelby ought to have recognised this situation and refused to lend to him. It follows that I don't think Shelby reached a fair decision to lend to Mr S.

#### Did Shelby act unfairly or unreasonably towards Mr S in some other way?

I've carefully read, listened to and thought about all the evidence provided by each party to this complaint. Having done so, I don't think Shelby has acted unfairly or unreasonably towards Mr S in some other way.

But I do think Shelby should have refused to lend to Mr S, so I am upholding his complaint about the loan.

#### **Putting things right**

When I find that a business has done something wrong, I'd normally direct that business to put the complainant in the position they would be in now if the mistake it made hadn't happened, as far as is reasonably practical.

In this case, that would mean putting Mr S in the position he would be in now if he hadn't been given the loan. But Mr S was given the loan and used the money, so it's right he should repay what he borrowed. But I don't think Shelby should benefit from charges or interest. So I think Shelby should:

- Calculate the total amount Mr S received from Shelby and deduct from that, the repayments he's made to the loan.
  - If this results in Mr S having repaid more than he received, any overpayments should be refunded to him. Interest at a rate of 8% simple per year should be added to any overpayments from the date they were made until the date of settlement\*.
  - If the calculation means there's still a balance for Mr S to pay, Shelby should let Mr S know how much is outstanding and reach a suitable, affordable payment plan with him. I remind Shelby of its obligation to treat customers fairly.
- Remove any negative information recorded on Mr S's credit file regarding the loan.

\* If Shelby considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr S how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

#### **My final decision**

My final decision is that I uphold this complaint. Shelby Finance Ltd trading as Dot Dot Loans should put things right for Mr S as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 17 April 2023.

Richard Hale  
**Ombudsman**