

The complaint

Mr H complains that Shelby Finance Ltd trading as Dot Dot Loans (Shelby) gave him a loan he couldn't afford to repay.

What happened

Mr H took one loan from Shelby for £350 on 12 October 2021. Mr H was due to make six monthly repayments of £114.24. Mr H has had problems repaying this loan and Shelby has said the balance has been given to a third-party debt collection agency.

Following Mr H's complaint, Shelby issued a final response letter. It detailed the checks that it carried out which included asking for income and expenditure details as well as carrying out a credit search. It was satisfied that based on these checks that Mr H could afford his loan repayments. So, it didn't uphold his complaint.

Unhappy with this response, Mr H referred his complaint to the Financial Ombudsman where the complaint was considered by an adjudicator who upheld it. He concluded Shelby ought to have carried out some further checks before the loan was granted because of the information Shelby was provided with as part of its credit checks.

Had further checks been carried out, Shelby would've likely discovered Mr H was using his income to pay for cryptocurrency and as a result was severely overdrawn and had several returned direct debits. So, he upheld Mr H's complaint about the lending.

Shelby didn't agree, I've read in full what it has provided, I've summarised the response below:

- Most of Mr H's outstanding debit related to his mortgage.
- There were no insolvency markers on his credit file and while some accounts had arrears markers – this was to be expected.
- While one long term secured loan had missed payment markers these appeared to have been rectified by the time this loan was granted.
- The checks completed by Shelby were proportionate for the amount that was advanced and regulatory guidance doesn't provide a list of information that it needed to obtain before lending – such as bank statements.
- Mr H's mortgage was only in arrears once, and that was around 18 months before the loan was approved.

Mr H seems to have agreed with the proposed outcome. As no agreement has been reached, the case 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 general approach to complaints about short-term lending - including all the relevant rules, guidance and good industry practice - on our website.

Shelby had to assess the lending to check if Mr H could afford to pay back the amount he'd borrowed without undue difficulty. It needed to do this in a way which was proportionate to the circumstances. Shelby's checks could have taken into account a number of different things, such as how much was being lent, the size of the repayments, and Mr H's income and expenditure.

With this in mind, I think in the early stages of a lending relationship, less thorough checks might have been proportionate. But certain factors might suggest Shelby should have done more to establish that any lending was sustainable for Mr H. These factors include:

- Mr H having a low 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 amounts to be repaid being especially high (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- Mr H having a large number of loans and/or having these loans over a long period of time (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- Mr H coming back for loans shortly after previous borrowing had been repaid (also suggestive of the borrowing becoming unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable for Mr H. This doesn't apply to Mr H's complaint because there was only one loan.

Shelby was required to establish whether Mr H could *sustainably* repay the loan – not just whether he technically had enough money to make his repayments. Having enough money to make the repayments could of course be an indicator that Mr H was able to repay his loan sustainably. But it doesn't automatically follow that this is the case.

Industry regulations say that payments are sustainable if they are made without undue difficulties and in particular, made on time, while meeting other reasonable commitments and without having to borrow to make them. If a lender realises, or ought reasonably to have realised, that a borrower won't be able to make their repayments without borrowing further, then it follows that it should conclude those repayments are unsustainable.

I've considered all the arguments, evidence and information provided in this context, and thought about what this means for Mr H's complaint.

Shelby has shown, that as part of the affordability assessment it asked Mr H for details of his income and expenditure. Mr H's income was declared as being £2,498 per month and he also declared his monthly outgoings were £970.

As part of the affordability assessment, Shelby compared what Mr H declared against his credit search results (I comment more about this below) as well as well data provided from the Office of National Statistics. Having carried out these checks, it didn't make any changes to Mr H's expenditure figures. This left more than sufficient disposable income for Shelby to reasonably conclude that Mr H could afford his repayments of around £115 per month.

Before this loan was approved Shelby also carried out a credit search and it has provided a summary of these results in the final response letter. It has also provided the details it received from the credit reference agency in a separate document. I want to add that

although Shelby carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard. But what Shelby couldn't do, is carry out a credit search and then not react to the information it received – if necessary.

Shelby was also entitled to rely on the results it was given, and I've looked at the results to see whether there was anything contained within them that would've either prompted Shelby to have carried out further checks or possibly have declined Mr H's application.

A summary of the information that Shelby was provided with shows:

- Mr H owed other creditors over £126,241 and just over £3,274 of that was "*Total value of revolving credit and budget accounts*".
- Mr H wasn't insolvent and hadn't defaulted on any accounts (both open and closed) within the last 12 months.
- Mr H had one credit card / revolving credit account which had a £3,000 limit and while at the time the loan was approved the account was within its limit. Mr H as recently as July 2021, had exceeded that limit – and this had been reported to the credit reference agencies.
- Another credit card / revolving facility with a £950 limit was also in arrears in July 2021. Although these had now been brought up to date, it does show that in the not to distance past Mr H had problems managing his existing credit commitments.
- Finally, a revolving facility with a limit of £2,450 was over its limit when the loan was approved – Mr H owed £2,508. As recently as July 2021, this had significant arrears of three months. And while, I can see that Mr H had made a large payment towards this debt it does seem that Mr H had immediately reused the available credit taking him back up to the limit. In addition, as the adjudicator pointed out there had been four cash advances from his account, and two in the last two months, - most recently for £670. Again, this is further information that suggests Mr H was struggling to maintain his existing credit commitments.
- Mr H recently closed an account in May 2021 – and at the point the account was closed it was in arrears.

In my view, the credit check results indicated that Mr H was having current and immediate difficulties in managing his existing credit commitments, I say this due to the number of accounts that were in arrears and Mr H's recent behaviour of drawing out cash from a credit card account. In addition the information Shelby gathered from the credit check demonstrated the monthly outgoing figures Mr H declared were not likely to be accurate.

Shelby says, as part of its affordability assessment it thought the monthly figure given of £970 was reasonable, but I can't agree with that. Just from the credit search results it knew that Mr H had £1,056 of loan repayments. On top of this Mr H also had credit card debt (or other revolving credit) totalling £5,438 which would lead to a minimum repayment of potentially at least £200 per month – but it could easily be more depending on the interest rate and the type of account. So just based on the credit file information, Mr H likely had around £1,256 of expenditure solely to service his outstanding commitments.

And of course, on top of this, there would likely have been further living costs that aren't recorded in a credit search, such as insurances, transport, food and council tax – to name a few. So even, ignoring the other information in the credit file, Shelby was on notice that Mr H's living costs would likely have been significantly more than the £970 he declared.

I do therefore think, in the circumstance of this case, Shelby's checks needed to go further than just relying on what Mr H had told it as well as the credit check results. Given everything Shelby had available to it at the time it should've done further checks, perhaps

verifying what Mr H had told it or checking his credit commitments to obtain a better understanding of his living costs to see whether there were any other loans that it needed to consider.

Shelby could've gone about doing what I consider to be a proportionate check a number of ways. It could've asked to see copy bank statements, copy of bills, asked for a full copy of his credit file or any other documentation it felt it needed to obtain in order to allow it to establish Mr H's true financial position. To be clear, I am not saying that Shelby had to review Mr H's bank statements only this was one of a number of ways it could've gone about making further enquiries into Mr H's circumstances.

Mr H has provided a copy of his bank statements for the month leading up to this loan being approved. And as I've said above, bank statements were just one of the ways Shelby could've found out more information from Mr H. So, in those circumstances I don't think it's unreasonable to rely on them. Shelby would've likely discovered, the following;

- As the adjudicator explained and I can also see that Mr H was using most of his income towards a cryptocurrency exchange, this ought to have led Shelby to question whether the loan was sustainable, given it already knew of his existing credit commitments and the risk associated with someone transferring so much money to an exchange. Whatever Mr H's reasons, the fact that this was impacting his wider financial situation ought to have led Shelby to question whether the repayments for this loan would be sustainable.
- Mr H was already struggling to repay his outstanding commitments, in the last week of September 2021, seven direct debits were returned as unpaid, with further payments being returned unpaid in the first week of October 2021. The industry regulation says that returned direct debits can be a sign that a consumer is experiencing financial difficulties.
- There were further living costs that needed to be factored into Mr H's living costs such as gym membership, car related costs such as tax, council tax and other insurance products.
- Mr H was taking high-cost short term loans from other credit providers including fully utilising a revolving credit product provided by a high-cost provider.

Overall, given what I can see in the bank statements, it's clear that Mr H was already struggling to keep on top of his existing credit commitments and therefore this loan ought to not have been provided to him.

While I accept the above information wasn't available to Shelby at the point of application, I do think it is likely it would've discovered some or all of what I've seen had it carried out what I consider to be a proportionate check. And as such, I'm therefore upholding Mr H's complaint about this loan and I've outlined below what it needs to do in order to put things right.

Overall, I'm satisfied that a further, more detailed look into Mr H's circumstances would've showed he was having difficulties maintaining his contractual repayments that he already had and knowing this I don't think Shelby would've believed that Mr H could've repaid this loan in a sustainable manner.

Putting things right

In deciding what redress Shelby should fairly pay in this case I've thought about what might have happened had it not lent to Mr H, 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 H may have simply left matters there, not attempting to obtain the funds from elsewhere. If this wasn't a viable option, they 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 they 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 reconstruct now accurately. 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 H in a compliant way at this time.

Having thought about all these possibilities, I'm not persuaded it would be fair or reasonable to conclude that Mr H 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.

Shelby shouldn't have given Mr H his loan.

If Shelby has sold the outstanding debt Shelby should buy it back if Shelby is able to do so and then take the following steps. If Shelby is not able to buy the debt back, then it should liaise with the new debt owner to achieve the results outlined below.

- A. Shelby should add together the total of the repayments made by Mr H towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything Shelby has already refunded.
- B. Shelby should calculate 8% simple interest* on the individual payments made by Mr H which were considered as part of "A", calculated from the date Mr H originally made the payments, to the date the complaint is settled.
- C. Shelby should remove all interest, fees and charges from the balance on any upheld outstanding loans, and treat any repayments made by Mr H as though they had been repayments of the principal on all outstanding loans. If this results in Mr H having made overpayments then Shelby should refund these overpayments with 8% simple interest* calculated on the overpayments, from the date the overpayments would have arisen, to the date the complaint is settled. Shelby should then refund the amounts calculated in "A" and "B" and move to step "E".
- D. If there is still an outstanding balance then the amounts calculated in "A" and "B" should be used to repay any balance remaining on outstanding loans. If this results in a surplus, then the surplus should be paid to Mr H. However, if there is still an outstanding balance then Shelby should try to agree an affordable repayment plan with Mr H. Shelby shouldn't pursue outstanding balances made up of principal Shelby have already written-off.
- E. Shelby should remove any adverse information recorded on Mr H's credit file in relation to the loan.

*HM Revenue & Customs requires Shelby to deduct tax from this interest. It should give Mr H a certificate showing how much tax it has deducted, if he asks for one.

My final decision

So, for the reasons I've explained above, I'm upholding Mr H's complaint.

Shelby Finance Ltd trading as Dot Dot Loans should put things right for Mr H as directed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 31 July 2023.

Robert Walker
Ombudsman