

## The complaint

Mr R complains that Shelby Finance Ltd, trading as Dot Dot Loans (“Shelby”) lent to him when he had many other loans outstanding and Shelby ought to have known that. He says Shelby lent to him irresponsibly.

## What happened

Using information provided by Shelby here is a loan table:

Loan	Approved	Amount	Term	repaid
1	2 August 2020	£150	6 months £47.08 each	28 November 2020
2	23 December 2020	£300 (applied for £500)	9 months £64.63 each	22 March 2021
gap in lending				
3	27 May 2022	£250	6 months £82.80	28 June 2022

After Mr R had complained to Shelby it sent him its final response letter (FRL) in which it gave reasons as to why it considered it had carried out checks proportionate to the loan value and the other circumstances it knew about Mr R from his application form. It did not uphold his complaint.

Mr R referred the complaint to the Financial Ombudsman Service and one of our adjudicators looked at it. He considered the details and did not think that Shelby needed to put things right for Mr R. He had pointed out the gap in lending between Mr R paying off loan 2 and applying to Shelby for loan 3. That would have made a difference to our adjudicator’s outcome and I explain more fully in this decision. The adjudicator to which I refer is not the adjudicator currently holding the complaint.

Mr R wasn’t happy about this outcome. He emailed us and informed us that he had ‘*gambling problems*’ and had a health issue. We had not been aware of the gambling issues up to this point.

I have listened to the recorded calls between Mr R and two of our adjudicators in which Mr R highlighted the fact that he had so many loans at the time that he ought not to have been given more credit.

Our former adjudicator did a second view but his opinion did not alter and he added that if Mr R had been gambling he would not have expected Shelby to have known about that unless Mr R had informed Shelby.

From the information we’ve received from Shelby it seems that Mr R had not informed Shelby of what he spent his money on. And our former adjudicator added that Mr R’s declared income and expenditure (the expenditure figures had been increased by Shelby when assessing his applications) gave the clear indication that he had enough disposable income with which to afford the repayments for each of the loans.

Mr R asked for an ombudsman to review the complaint. He sent to us two PowerPoint files. He repeated that in his view he had nine outstanding loans at the time. He was invited to send in additional information before it was referred to an ombudsman including information about when it was he informed Shelby about his health issues. Mr R had not sent those items in.

The unresolved complaint was passed to me. I analysed the credit search results carried out by Shelby and asked for additional information from Mr R which he sent to us.

I issued a provisional decision on 16 August 2023. A duplicate of that appears in the next section so that both parties have it to hand.

### **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.

### **Duplicate of what I provisionally decided – and why – on 16 August 2023**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

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

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 R. These factors include:

- Mr R 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 R having many loans and/or having these loans over a long period (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable);
- Mr R 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 R. As there was a break in the lending relationship between loans 2 and 3 I don't consider that a pattern developed.

Shelby was required to establish whether Mr R could *sustainably* repay the loans – 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 R was able to repay his loans 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, 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 R's complaint.

### *Gap in the lending*

Mr R may not appreciate, because I don't think it's been explained to him, that the break in the lending between paying off loan 2 and applying to Shelby for loan 3 would lead me to say that it would have been reasonable for Shelby to have treated loan 3 as the first loan in a new loan chain. Which ordinarily would mean that Shelby could have treated Mr R as a new customer when he applied for loan 3 and therefore could have relied on the information about his income and his expenditure given to it by Mr R. That would be proportionate for the first loan in a new chain. So, this break does have some implications.

Mr R did not need the credit provided by Shelby for the 14 months between paying off loan 2 successfully and applying to it for loan 3. I appreciate that Mr R may feel differently but I am approaching the complaint impartially and with the benefit of being able to review all the information I have from both parties and from both perspectives. I have kept all this in mind when coming to the conclusion I have.

### *Provisional findings*

I am issuing a provisional decision to give reasons why I think that for two of the loans Shelby ought to have investigated further before approving the loans. And I say to both parties that I've considered this complaint carefully as I am aware that Mr R gave reasons for the loan applications which were home improvements, appliance purchases and medical/dental. And I am aware that the value of these loans was not particularly high. So, at first view they may have looked affordable and taken for household reasons and due to a short term- cash flow issue which often is what these sorts of high-cost loans were used for.

In our adjudicator's second view he said that he thought the Credit Reference Agency (CRA) search results did not show multiple payday loans held by Mr R at the time.

This is where my opinion departs from that held by our former adjudicator. I have reviewed the spreadsheet results sent to us by Shelby which gave its CRA search results and I have seen that Mr R did have multiple loans and an overdraft on one of his bank accounts plus credit cards. In fairness it is not necessarily clear as to which of the outstanding loans were high cost and which were relatively standard loans but cross referring that excel spreadsheet with the summary information Shelby gave in its FRL and in its submissions to us, then I can see it had noted he had had taken short term loans. One example is at the loan 2 application, the details show that Mr R had taken £719 - effectively – between taking loan 1 and applying for loan 2.

### *Loan 1*

Dealing with each loan in turn, at loan 1, it was for £150 and Mr R was a new customer. The loan term was for 6 months and the repayments were relatively modest. Shelby did not need to do a credit search but having done one then the results would need to have been factored into the creditworthiness assessment required of it.

I have taken time to analyse those credit search results and in August 2020 (loan 1) Mr R had six loans for which the monthly repayments looked to have been £406. Mr R had one credit card which had a balance of £180 on a £200 limit which I'd not consider particularly high. He had an overdraft on one of his four bank accounts and he had a telephone contract.

Mr R may say that he had an overdraft on another current account but that debt has not registered with this CRA. I must proceed on what Shelby obtained and relied on.

With Mr R's declared income of £2,400 after tax and outgoings of £880 (which Shelby increased to £1,008) plus the loan 1 repayments I'd not consider that Shelby lent irresponsibly at loan 1. The repayments were around £47 and for a short time. I do not plan to uphold the complaint about loan 1.

### *Loan 2*

Mr R applied for £500 over a nine month repayment term and Shelby approved £300 for Mr R. He'd declared an income of £2,500 and expenditure commitments of £1,015 which Shelby appeared to

agree with as it remained unchanged when carrying out its assessment. So, Mr R's disposable income would have looked to have been high.

Turning to the CRA results which I have reviewed in detail, Mr R had three open loans plus an open instalment loan all for which he had to repay around £270 each month. Mr R now had two credit cards for which the balances were not high but he'd taken cash advances from them five times in a month using his cards which can sometimes be a sign of financial distress.

Mr R's overdraft on the account was £2,369 on a limit of £2,950.

One set of records Shelby has provided about loan 2 shows Mr R had taken £719 in short term loans between taking loan 1 and applying for loan 2. I mentioned this earlier in the decision.

Added to which five loans had closed the month before in November 2020. And the significance of those was that Shelby would have been aware of his constant churn of loans over relatively short periods. This can be another indication of financial distress and it was more likely than not that these were high cost short term loans. Closing five, running three and applying to Shelby for more credit would, in my view, have led Shelby to be on notice that there was more going on in Mr R's financial background than he had told them.

Each of these points alone may not have prompted me to think that Shelby ought to have carried out additional checks, but I do think that it should have when considering all these together.

However, I had no bank account statements and so I asked Mr R for copies. Mr R replied to say he used three bank accounts at the time, he sent me copies and they showed me:

Bank A - in December 2020 Mr R had a balance of £6.28

Bank B – for the period October 2020 and up to 9 November 2020 - Mr R was transferring money into it from another account regularly and there were international transactions but it's not clear what they were for. They were to a country outside Europe. On 9 November 2020 the balance was £0. For most of the later part of November 2020 the bank statements showed Mr R was making online betting and gambling transactions and one example was on 30 November 2020 Mr R spent around £260.

Bank C – into this account Mr R's salary was paid and I can see it was around £2,577 after tax. The transactions on that account for 3 November 2020 to 2 December 2020 show me that Mr R had a credit facility on which he regularly drew-down funds and had to repay them regularly too. Mr R was also paying at least four other high-cost loan debts and there were many transactions abroad. There's evidence of multiple betting and gaming transactions many of which appear to be international transactions.

Mr R was permanently in his overdraft on this account which had an overdraft limit of £2,950.

In the circumstances, I consider that Mr R has provided evidence of what Shelby would have likely seen if it had looked into his finances further and Shelby would have appreciated the international transactions (likely gambling) the clear gambling and gaming transactions plus the multiple other loan repayments.

I plan to uphold Mr R's complaint about loan 2.

### *Loan 3*

In May 2022 Mr R applied for a £250 loan repayable over six months.

Despite the break in the loan chain, Shelby did an additional check which it was not required to do – it obtained a credit search and having got that I do not think it can fail to have noticed that Mr R did have six outstanding loans, an overdraft on at least one account and five credit cards. These were at their limits and one exceeded its limit. Mr R's overdraft was £2,911 on a limit of £2,950.

The total to repay on the six loans was £932 for the month up-coming which included two payday loans costing Mr R £334 and £300 according to the CRA records I've been sent.

Plus, Mr R had five credit cards with a total balance of £2,736 which at 5% minimum repayment would have been around £137 each month and that would not reduce the principal owed by very much. That plus his telephone cost likely would have taken his monthly credit repayments to over £1,069. Mr R had declared his income after tax to have been £2,800. Then Mr R's repayment on loan 3 was due to have been just under £83 and so that would have meant 41% of his monthly salary was due to be taken up solely with credit commitments. That is relatively high in my view.

That CRA search for the loan 3 application showed a marked increase in the number of accounts and credit commitments Mr R had and he was due to pay over £1,150 (including loan 3) in servicing all these. Mr R had an overdraft on one account as well.

And even if Shelby had viewed this loan 3 CRA check in isolation from the rest then this CRA check showed a high level of commitment to multiple lenders and that 41% of his income was going to be needed to service them all plus the Shelby loan 3.

Shelby did increase Mr R's overall expenditure using the information it had on the credit searches plus using Office of National Statistics (ONS) data to £1,966 at loan 3. Still on those figures the Shelby loan would have looked affordable. And I have considered this part of Mr R's complaint very carefully as I can't ignore that the loan applied for was £250 which is a low sum and for a six month loan term. Mr R had said it was for '*medical/dental*'.

But my concern arises in relation to Mr R's indebtedness overall before loan 3 was approved about which Shelby was aware from its credit checks. And I doubt that Mr R was able to repay the £83 a month – on top of all his other commitments – sustainably.

I think that Shelby had enough evidence for it to have seen the over-indebtedness Mr R was in without needing to view bank statements. And I am conscious that the loan application was for £250 and so normally I'd not advocate that a lender would need to ask for them.

However, as I had asked for the bank statements for the period covering the two months leading up to Mr R applying for loan 2, I also asked for them for the period leading up to loan 3. So, I have reviewed them and they demonstrate to me that the gambling transactions had increased a lot on Bank account A. On Bank account C Mr R on 11 and 12 May 2022 paid back at least seven high cost loan debts plus made multiple betting transactions.

Had Shelby seen any of these accounts it wouldn't have concluded that Mr R could afford the loan repayments in a sustainable manner.

I plan to uphold the complaint about loan 3.

### ***How did the parties respond to the provisional decision?***

Shelby replied to say that it agreed with my provisional decision. Mr R was content with the outcome as well and had emailed and had telephoned to speak to our current adjudicator.

As both parties agree then I see no reason to depart from my provisional findings and those are repeated here and form part of the final decision.

For the reasons given I uphold Mr R's complaint about loans 2 and 3. Shelby needs to put things right for those two loans.

## **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 R from loan 2, 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 R may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this lender which they may not have had with others. 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 R 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 R 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 needs to do as follows:

- refund all interest and charges Mr R paid on loans 2 and 3;
- 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;
- remove any negative information about loans 2 and 3 from Mr R's credit file;

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

## **My final decision**

My final decision is that I uphold the complaint in part and I direct that Shelby Finance Ltd, trading as Dot Dot Loans, does as I have outlined in the 'putting things right' part of the decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 25 September 2023.

Rachael Williams  
**Ombudsman**