

The complaint

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

What happened

Mr P took one loan from Shelby for £400 on 6 March 2020. Mr P was due to make six monthly repayments of £114.95. Mr P repaid his loan on 8 January 2021.

Following Mr P'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 P could afford his repayments. So, it didn't uphold his complaint.

Unhappy with this response, Mr P referred his complaint to the Financial Ombudsman. Shelby then provided its file of evidence and explained that although the outcome it had reached in the final response letter was correct, as a gesture of goodwill it had agreed to remove the adverse data from Mr P's credit file.

The complaint was considered by an adjudicator who upheld the complaint. She concluded Shelby ought to have carried out some further checks before the loan was granted. Had it done so, Shelby would've likely discovered Mr P had taken four new loans in the month before this loan was approved.

She also acknowledged what Mr P said about his health and why Shelby may have wanted to know more about this because it wasn't aware of any concerns at the time the loan was granted.

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

- Mr P's credit file didn't show an excessive amount of debt or any insolvency markers.
- Mr P was utilising his overdraft, but this hadn't been exceeded.
- The credit file showed that Mr P was managing his finances well.
- Although, Mr P may have been granted four further loans in February 2020 this wasn't visible in the information Shelby had at the time.

Mr P 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 P 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 P'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 P. These factors include:

- Mr P 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 P 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 P 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 P. This doesn't apply to Mr P's complaint because there was only one loan.

Shelby was required to establish whether Mr P 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 P 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 P's complaint.

Shelby has shown, that as part of the affordability assessment it asked Mr P for details of his income and expenditure. Mr P's income was declared as being £1,350 per month and he also declared his monthly outgoings were £650.

As part of the affordability assessment, Shelby compared what Mr P 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 increased Mr P's expenditure and instead used a monthly expenditure figure of £756.

This left more than sufficient disposable income for Shelby to reasonably conclude Mr P 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 copy of the results as well as the summary of them which can be found in the final response letter. 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 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 it that would've either prompted Shelby to have carried out further checks or possibly have declined Mr P's application.

A summary of the information that Shelby was provided is;

- Mr P owed other creditors over £7,234 and just over £5,000 of that was "*balances on loans*".
- Mr P wasn't insolvent and hadn't defaulted or had any arrears recorded on any accounts (both open and closed) within the last 12 months.
- Mr P recently had used payday loans – with one such account being opened within the last 50 days.
- Mr P had recently opened one new credit card account in January 2020 and two loan accounts – one in December 2019 and one in January 2020.
- Mr P also already had four active loans with terms ranging from 12 to 18 months, indicating that these were likely high-cost instalment loans. The total Mr P needed to pay just to manage these loans was around £460 per month – which is around a third of his income.
- Although, the overdraft Shelby knew about didn't need to be repaid in one go – it was aware that Mr P – had since at least August 2019 been at or close to the overdraft limit. This is important, because even after Mr P received his salary, he would still likely been significantly overdrawn.

Mr P was a modest earner, had quite a significant overdraft, recently had taken a new 18-month loan and on the same day a previous loan (for the same term) had been repaid. So, Shelby knew that just over a third of Mr P's income was going towards servicing active loans – which in some situations can be sufficient to uphold a complaint.

I do therefore think, in the circumstance of this case, Shelby's checks needed to go further than just relying on what Mr P 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 P had told it or checking his credit commitments 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 several 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 P's true financial position.

Mr P has provided copy of his bank statements for the months 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 P. So, in those circumstances I don't think it's unreasonable to rely on them.

Had further checks been carried out Shelby would've likely discovered he also had a flexible credit product – that was costing Mr P around £600 per month. And he had been using this for a number of months. It also would've known that in the month before the loan was approved, Mr P had taken a further three payday loans.

Shelby would've likely discovered, Mr P had in total at least six outstanding payday loans, a guarantor loan as well as a flexible credit product. Overall, in my view, Mr P was already significantly over indebted and was having problems managing his finances, given the number of high-cost credit loans he had.

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 P'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 P'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 P could've repaid this loan in a sustainable manner.

Finally, as Mr P applied for this loan online Shelby wasn't to know about the health problems that he has. And I can't say that Shelby did anything wrong in this respect. In addition, I can see the emails between himself and Shelby – where it asked for further information. It's clear from Mr P's response that he was unhappy to provide it – but I do think it was reasonable of Shelby to have made some enquires with Mr P in relation to this. So, while I understand Mr P may have been unhappy about this – I don't think Shelby did anything wrong.

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 P, 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 P 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 P 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 P 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 P this loan.

- A. Shelby should add together the total of the repayments made by Mr P towards interest, fees and charges on this loan.
- B. Shelby should calculate 8% simple interest* on the individual payments made by Mr P which were considered as part of "A", calculated from the date Mr P originally made the payments, to the date the complaint is settled.
- C. Shelby should pay Mr P the total of "A" plus "B".

D. Shelby should remove any adverse information it has recorded on Mr P's credit file about the loan.

*HM Revenue & Customs requires Shelby to deduct tax from this interest. It should give Mr P 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 P's complaint.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 13 July 2023.

Robert Walker
Ombudsman