DRN-4084432

The complaint

Mr M complaint about Shelby Finance Limited trading as Dot Dot Loans has three parts. Firstly, he called Shelby on 13 January 2022 and was advised a 30-day hold would be placed on the account – where he was told he wouldn't be contacted by Shelby. Shelby then sent Mr M an arrears email and he thinks that was wrong.

Secondly, Mr M was told he would be receiving a default notice in the post – during the period when the 30-day hold was applied. And when the notice was sent, Mr M wasn't three months in arrears with his payments. So, he thinks this was incorrect.

Thirdly, in the email informing him that the default notice would follow, Shelby provided incorrect office opening times. And Mr M tried to contact Shelby to discuss the default notice at a time when it was closed.

In order to put things right, Mr M has requested an apology and compensation.

What happened

Following a complaint to Shelby, it issued its final response letter in February 2022, and concluded:

- It did agree to put the account on hold for 30 days, but it didn't tell Mr M that during this time that regulatory communications – such as a notice of default could still be sent.
- As a result of Shelby refunding the payments Mr M had already made, in December 2021 his account fell into arrears and this led to the notice of default being issued to Mr M on 28 January 2022.
- Shelby accepted Mr M was given the wrong business opening hours in an email.

Unhappy with this response, Mr M referred his complaint to the Financial Ombudsman where it was considered by an adjudicator. He didn't uphold the complaint, although he did agree that Shelby had provided the wrong opening times. And while Mr M hadn't been told about the letters, he may receive during the 30 days hold Shelby hadn't made an error when it sent the arrears notice. Finally, he didn't think an error had been made with regards to the default notice.

Mr M didn't accept the adjudicator's outcome saying: "*very serious errors have occurred*". But no further comments were provided by Mr M and instead the complaint has been passed to an ombudsman 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.

Having reviewed Mr M's complaint form, there appears to be three distinct elements of his complaint and therefore I've split the decision into three separate parts – dealing with each one in turn.

30 days hold

There is a fair amount of agreement about what happened in relation to the 30 days hold. Mr M called Shelby to discuss having his last two payments refunded – which was needed following a family situation – which I am sorry to hear about. While this refund was processed Shelby arranged for a call back with Mr M to discuss the account.

On this call back – 14 January 2022, Shelby did agree to place the account on hold for 30 days – to allow Mr M to review his finances and seek any advice that he may have wanted. This in my view was entirely fair and reasonable for Shelby to place the hold on the account. And it is agreed that Shelby told Mr M that while his account was subject to the hold there would be no further collection activity – such as calls or letters. But Shelby accepts that it *failed* to inform Mr M that during this hold he could receive arrears notices and / or a default notice.

So, I can quite understand Mr M's unhappiness then when he received the sum in arrears notice dated 15 January 2022, which was the day after he had been told the account would be placed on hold with no contact.

The error, here is that Shelby led Mr M to believe, that he wouldn't receive any contact from Shelby during the 30 days hold. Whereas the actual position was that he could still receive letters that were required to be sent such as arrears notices. That is what Shelby ought to have explained to Mr M on 14 January 2014.

I've thought about whether a further award ought to be made, but in this case, the loss to Mr M is a loss of expectation that he wouldn't be contacted. Whereas he was always going to receive the letters that he did – regardless of the 30 days hold. And I can see from what Shelby says in the FRL that the correct position with regards to contact was explained on 17 January 2022. This seems to have been the first opportunity Shelby had to make sure Mr M was fully aware of the 30 days hold after the notice was sent. I consider this reasonable, and no award needs to be made.

Default notice

Shelby has explained that the reason why a default notice was issued was due to it refunding two payments made by Mr M in December 2021. The refund was processed on 14 January 2022. As a result of the returned payments, it pushed Mr M's account into arrears – which Shelby says was around 63 days by the end of January 2022 and it was therefore sufficiently in arrears for a default notice to be sent.

Shelby said it was required to send the default notice, because the account was sufficiently in arrears, and it gave Mr M time to either come to an arrangement and/or pay the amount specified in the notice. Should that not happen, Shelby was within its rights to default the account.

Whereas Mr M's position is that no one explained to him that he may receive a default notice during the 30 days hold and he said this was the last thing he needed, as he was going through a difficult time.

Firstly, I've already concluded – and which Shelby has agreed, that Mr M was given incomplete information on the phone call on 14 January 2022 about the nature of the hold

and what letters may or may not be sent. And, at the time of this call, Mr M's account wasn't in arrears, it only fell into arrears once the payments had been refunded to him. While Mr M clearly needed the returned funds to help alleviate a family situation this did have the effect of putting his account significantly in arrears.

When thinking about the default notice, I've kept in mind the Information Commissioner's Office (ICO) guidance. The ICO is the body set up to monitor personal data and how it is used.

The ICO has issued a paper entitled *"Principles for the Reporting of Arrears, Arrangements and Defaults at Credit Reference Agencies"*. This sets out standards and guidance as to when a default can or can't be reported and so I consider this to be good industry practice and I've reviewed what it says to establish whether Shelby has made an error in this complaint. Principle 4 of the guidance says that a default can be applied:

> *As a general guide, this may occur when you are 3 months in arrears, and normally by the time you are 6 months in arrears.*

Clearly, when Shelby issued the default notice in January 2022 Mr M's account wasn't sufficiently in arrears for a default to be applied but had Mr M made no further payments and or not come to an arrangement with Shelby for the balance then it would've been entitled to record a default with the credit reference agencies because by the end of February 2022 the account would've been three months in arrears.

I accept the default notice would've been unexpected for Mr M, but equally, his account was in arrears and while it is accepted Mr M was told there wasn't going to be any further contact during the 30 days hold, Shelby says its position was clarified on 17 January 2022 which was before the default notice was sent.

Overall, while receiving the default notice may have been concerning for Mr M, I'm not persuaded, Shelby made an error when it issued it. So, I do not uphold this part of the complaint.

Business hours

Shelby has accepted in the FRL that Mr M had been provided with incorrect information about its opening times. Mr M says he was trying to call to speak to Shelby to discuss the default notice. He says he was in a panic but when he called – during the hours Shelby said it was open - he received a message to say the office wouldn't open until 9 o'clock.

Mr M says he didn't ring back on the same day – during the time when it was open as he waited for the default notice to be received in the post and for the 30 days hold to expire. I understand why he did that, but equally, Mr M was told that the office would be open around 40 minutes after his attempted call and I see no reason why he couldn't have called back then if he wished.

Shelby has apologised for this error and given the circumstances I think this is fair and that no compensation is warranted. Unfortunately, dealing with lenders' – like Shelby isn't always straightforward or hassle free, and ringing at the time the office was closed would be a nuisance and annoying. But just because a lender has made an error – that doesn't mean an award of compensation is warranted. Having thought about everything, including Shelby's explanation for the error, I do consider the apology sufficient, and I therefore make no award.

Overall, while Shelby has accepted errors were made when it dealt with Mr M in January 2022, I am not instructing Shelby to pay any compensation to him.

My final decision

For the reasons I've explained above, I'm not upholding Mr M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 10 August 2023.

Robert Walker
Ombudsman