

The complaint

Miss T complains that Shelby Finance Ltd trading as Dot Dot Loans (Shelby) gave her another loan after she had already raised a complaint about unaffordable lending.

She says for her final loan, was approved without her needing to supply any documents and the final loan wasn't affordable because Miss T was in a debt spiral.

What happened

Miss T was advanced a total of three loans between December 2019 and April 2021. I've included some of the information we've received about these loans in the table below.

However, this decision only focuses on loan 3, but loans 1 and 2 have been included to show the overall lending relationship.

loan number	loan amount	agreement date	repayment date	number of monthly instalments	highest repayment
1	£500.00	06/12/2019	29/05/2020	6	£144.68
2	£200.00	21/09/2020	31/03/2021	6	£62.57
3	£450.00	09/04/2021	outstanding	9	£97.55

Based on the statement of account, the last payment Miss T made towards loan 3 was in October 2022. Shelby says, as of November 2022 Miss T still owed it around £540.

Following Miss T's complaint about her third loan, Shelby wrote to her to explain that it wasn't going to uphold the complaint because it had carried out proportionate checks which showed the loan was affordable. Unhappy, Miss T, referred the complaint to the Financial Ombudsman Service.

In the adjudicator's latest assessment, she thought Shelby ought to not have provided the third and final loan. This is because the loan was granted only a couple of months after Shelby issued a separate final response letter about whether loans 1 and 2 were irresponsibly lent. This led the adjudicator to conclude Shelby ought to have verified the information Miss T had provided. Had it done so, it would've discovered that Miss T already had five outstanding payday loans and so the loan wasn't sustainable for her.

Shelby didn't agree. I've read in full what it has sent but I've summarised the response below.

- When loan 3 was approved, Miss T had around £5,200 of outstanding debt, which Shelby doesn't consider to be excessive.
- The credit report didn't have any information such as defaults that gave Shelby cause for concern.
- Miss T's income was verified with a credit reference agency and after carrying out expenditure checks it was satisfied Miss T could afford the loan.
- The checks before granting loan 3 were proportionate.

The case was then passed to an ombudsman to make a decision about the complaint.

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 this type of lending - including all the relevant rules, guidance and good industry practice - on our website.

I want to be clear that this decision only deals with whether Shelby should or should not have approved loan 3.

Shelby had to assess the lending to check if Miss T could afford to pay back the amount she'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 a number of different things, such as how much was being lent, the size of the repayments, and Miss T'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 Miss T. These factors include:

- Miss T 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);
- Miss T 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);
- Miss T 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 Miss T.

Shelby was required to establish whether Miss T could *sustainably* repay the loan – not just whether she technically had enough money to make her repayments. Having enough money to make the repayments could of course be an indicator that Miss T was able to repay her 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 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 Miss T's complaint in relation to loan 3 only.

Loan 3

In-between loan 2 and loan 3 being approved, Miss T made a complaint to Shelby about her first two loans because she said they were unaffordable. Shelby provided an answer to

Miss T about loans 1 and 2 in January 2021. But this was only a few months before loan 3 was advanced. I've kept this in mind when deciding whether proportionate checks were carried out.

Miss T declared she had a monthly income of £1,920 and she also declared monthly outgoings of £780. This left £1,140 in declared disposable income for Miss T to be able to afford the monthly repayments she was committed to making of around £97.

However, as part of the affordability assessment, Shelby checked Miss T's income with a credit reference agency, after doing so, it reduced her income to £1,740. Shelby also carried out further checks on Miss T's expenditure – it considered data provided by the Office of National Statistics as well as what it saw on her credit report. After carrying out these checks, it increased her expenditure to £802.91. This left disposable income of around £937 and so the loan still looked affordable.

In addition, before the loan was approved, Shelby says it also carried out a credit search. It is worth saying here that although Shelby carried out a credit search there isn't a regulatory requirement to do one, let alone one to a specific standard.

Therefore, it's entirely possible that the information Shelby received may not entirely reflect the information Miss T may be able to view in her downloadable credit report. There could be a number of reasons for this, such as Shelby only asking for certain pieces of information. But what Shelby couldn't do is carry out a credit search and then not react to the to the information it received.

Looking at the credit file, Shelby knew Miss T had overall debts of around £5,200, had one account become 'defaulted' within the previous 12 months and had one active payday loan account. While Shelby was aware of some adverse credit file data, I don't think the results alone would've been enough for it to either have prompted further checks or have led to Shelby declining the loan application.

However, as I've said above, this loan was approved only a matter of months after Miss T had raised an unaffordable lending complaint about loans 1 and 2 and which she received a final response letter about. So, I do think Shelby was on notice that Miss T may have been having some difficulties because she had already raised a complaint about them. This ought to have prompted it to have made further enquires with Miss T.

Therefore, I think Shelby needed to gain a full understanding of Miss T's actual financial position to ensure the loan was affordable and sustainable. This could've been done in several ways, such as asking for evidence of her outgoings, looking at bank statements, reviewing Miss T's full credit file or obtaining any other documentation Shelby felt may have been needed.

This might've helped verify information provided and revealed whether there was any other information that Shelby might've needed to consider about Miss T's financial position.

Miss T has provided copies of her bank statements for the months leading up to this loan being approved and so I think it's entirely reasonable to view these. I appreciate there was no regulatory requirement for Shelby to have viewed the bank statements, but as I've said above this was only one of a number of ways it could've gone about verifying Miss T's information and I consider this needed to have been done in order for a proportionate check to have been conducted.

Had further checks been carried out, Shelby would've likely discovered Miss T already had five outstanding payday loans and two high-cost credit loans which was costing Miss T over

£800 per month to service. In my view, the sheer number of outstanding payday loans mean this Shelby loan was clearly unsustainable and suggested that Miss T was having financial difficulties as she had a need to take on new borrowing.

In addition, the cost of servicing just these debts (and before the current Shelby loan) was factored in would've taken up nearly 50% of Miss T's income before any other credit commitments – such as the credit card and mobile phone contracts were considered and any other living costs.

Taking everything into account, loan 3 was neither sustainable nor likely affordable for Miss T and Shelby would've realised this had it carried out what I consider to be a proportionate check.

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 loan 3 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 Miss T may have simply left matters there, not attempting to obtain the funds from elsewhere – particularly as a relationship existed between them and this particular 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 Miss T 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 Miss T 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 Miss T loan 3. If Shelby has sold the outstanding debts it should buy these back if it 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 Miss T towards interest, fees and charges on all upheld loans without an outstanding balance, not including anything it has already refunded.
- B. Shelby should calculate 8% simple interest* on the individual payments made by Miss T which were considered as part of "A", calculated from the date Miss T 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 Miss T as though they had been repayments of the principal on the outstanding loan. If this results in Miss T 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. It 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 the outstanding loan. If this results in a surplus, then the surplus should be paid to Miss T. However, if there is still an outstanding balance then Shelby should try to agree an affordable repayment plan with Miss T.
- E. Shelby should remove any adverse information recorded on Miss T’s credit file in relation to loan 3.

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

My final decision

For the reasons I’ve explained above, I uphold Miss T’s complaint about loan 3.

Shelby Finance Ltd trading as Dot Dot Loans should put things right for Miss T as directed above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss T to accept or reject my decision before 24 April 2023.

Robert Walker
Ombudsman