

The complaint

Miss T complains that Shelby Finance Limited, trading as Dot Dot loans, lent to her when she could not afford it.

What happened

Using records provided by Shelby, here is a loan table:

| Loan | Approved | Amount | Term and repay | closed | Credit file – |
|------|-------------|--------|----------------|-------------|--------------------------------|
| 1 | 17 Oct 2020 | £200 | 3 x £110.29 | 11 Nov 2020 | 1 default and total debt £351 |
| 2 | 17 Nov 2020 | £200 | 6 x £63.59 | 18 Nov 2020 | Total debt £804 1 default |
| gap | | | | | |
| 3 | 21 May 2021 | £200 | 9 x £43.22 | open | Total debt £2,800 1 default |

Miss T had told Shelby that for loans 1 and 2 she was living at home with her parents and for loan 3 – her living arrangements have been noted as ‘other’.

Miss T had told Shelby that she was employed full time, and earned £1,397 per month and her declared income did not alter much between the loan applications.

In the final response letter (FRL) from Shelby, it went through each application in detail. It appears that as part of the investigation into the complaint Shelby had asked for and had received copies of Miss T’s bank statements. Shelby commented in the FRL that it could see some gambling transactions but it would not have known of these at the time she had applied to it for the credit.

Shelby did not uphold her complaint and in September 2022 Miss T referred it to the Financial Ombudsman Service. The core of Miss T’s complaint is that her gambling meant that she only repaid the loans due to her gambling winnings and she ought never to have been given the loans due to the gambling she was doing at the time.

Our adjudicator originally did not think that Shelby had done anything wrong with the lending decisions save for loan 3 where she thought that Shelby ought to have checked things out more. But later our adjudicator altered her view. Miss T had sent to our adjudicator bank account statements. And her view was altered to an uphold of the complaint for loan 3. The basis for the uphold was as follows (‘you’ refers to Shelby):

‘Your credit checks at the time of loan 3 show that Miss T had a default recorded in June 2020 and also had an account in arrears for 2 months in May 2021 which was

around the same time that Miss T applied for loan 3. Based on what you saw, I think you should've made further enquiries to build a more detailed picture'

Shelby disagreed and sent to us several submissions as to why, all of which I have reviewed. One in particular was that Miss T had declared a monthly income of £1,400.00, which was successfully verified with the credit reference agencies. Shelby also explained that it had verified the stated expenses based on current information from the Office of National Statistics (ONS) and information provided by the credit reference agency. Shelby had concluded for loan 3 that:

'After taking into account all of [Miss T's] expenditure, the affordability assessment showed she had ample disposable income of £576.00 to be able to meet the repayments of £43.22, we utilised a total of 7.5% of [Miss T's] uncommitted and available income for the repayments to her loan.'

The unresolved complaint was passed to me to decide. On 23 June 2023 I issued a provisional decision giving reasons why I considered that Shelby would not have had cause to review Miss T's bank account statements and so would not have seen or been aware of any gambling activity. So, my provisional decision was that I planned not to uphold the complaint.

That provisional decision is duplicated here for ease of reading and it is in smaller type to differentiate it.

What I provisionally decided – and why – on 23 June 2023

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.

Shelby had to assess the lending to check if Miss T could afford to pay back the amounts 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.

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. But as there was a six month gap between loans 2 and 3, and the first loan chain was only two loans then the pattern did not materialise.

Shelby was required to establish whether Miss T could sustainably repay the loans – 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, 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.

I am issuing a provisional decision to give reasons why I do not think that the credit search results in May 2021 would have, or ought to have, prompted Shelby to have delved deeper into Miss T's financial situation. And I do not think that the gap in the lending between loans 2 and 3 has been accounted for.

Miss T repaid loans 1 and 2 quickly. Her credit search results for those two loans showed a very low overall debt and one default recorded within 12 months of the loans being applied for. These would have caused Shelby no issues and as Miss T was a new customer and only applying for £200 on each occasion then the decision to lend was a reasonable one based on checks I'd have considered proportionate at the time.

Then there was a gap in lending from the closure of loan 2 on 18 November 2020 to the application for loan 3 on 21 May 2021 – six months later. My view is that a six month gap between Miss T paying off loan 2 and applying for loan 3 demonstrated to Shelby that she was not dependent on credit, that her finances were likely to have been under control and so it was entitled to approach the loan application for loan 3 as if Miss T was applying to it for the first time. I'd consider that to have been the commencement of a new loan chain.

Shelby did carry out a new credit search and having reviewed that set of results then it does seem that her indebtedness had increased. But the adverse record – one default – had not altered. So, nothing untoward appeared to have happened in the intervening months. There was one set of arrears on a loan in May 2021 but a lender such as Shelby is used to lending to customers with some adverse entries on their credit files. So, I do not consider that to have been severe enough either for Shelby to have refused the loan or felt it needed to delve deeper into Miss T's financial situation at that point.

In the end, the starting point is that Miss T applied to Shelby for the loan and therefore a positive assumption can be made that Miss T wanted the money.

None of this would – in my view – for a £200 loan applied for at the start of a new loan chain – have prompted Shelby to have asked for further and more detailed information into Miss T's financial situation. There was nothing that would have prompted it to have felt that was required before approving the £200 loan in 2021. And I'd consider that for Shelby to have asked for and reviewed Miss T's bank account statements would have been disproportionate.

And so, it's highly likely that unless Miss T told Shelby of her gambling spending, of which there is no evidence, then I'd have not expected it to have known of it. I plan not to uphold the complaint.

This is the end of the duplicated provisional 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.

As it was a provisional decision 'non-uphold' I'd not expect to hear from Shelby.

Miss T has responded.

I've chosen to address Miss T's last point first which was that she has said she has a reduced income now due to receiving maternity pay. From reading her email to us it seems that the birth date is imminent and I wish her well.

So, as this event post-dates the loan applications this is not relevant to what I am being asked to consider which are the lending decisions made by Shelby in 2020 and 2021.

As for the future, if Miss T still owes money to Shelby (which I think she does) then her reduced income is highly relevant to the debt collection activities surrounding the outstanding loan and so I ask Shelby to take note of this through this decision. And I recommend that Miss T contacts Shelby to discuss the repayment and that she raises these points with it.

As for the response to the merits, the core of what Miss T is saying is that Shelby ought not to have lent to her because she was a person '*stuck in the throes of a gambling addiction*' and had applied and been given credit from several sources to fund it - none of which was affordable for her. Miss T said:

'The only reason the first 2 loans were repaid quickly was due to gambling wins, not because of being financially viable.'

So, it comes down to whether Shelby knew, or was likely to have known, of Miss T's gambling. My view has not changed for any of the loan applications. The credit file history was not such that it would necessarily have alerted Shelby to consider it had to do a deeper investigation into Miss T's financial situation for any of these loans. All were of modest value. Loan 3 was applied for after a gap of six months and the repayments were for £43 a month which is not a high figure.

The adverse record – one default – on the credit search for loan 3 had not altered from the previous searches for loans 1 and 2. So, nothing untoward appeared to have happened in the intervening months.

There was one set of arrears on a loan in May 2021 but a lender such as Shelby is used to lending to customers with some adverse entries on their credit files. So, I do not consider that to have been severe enough either for Shelby to have refused the loan or felt it needed to delve deeper into Miss T's financial situation at that point.

In the end, the starting point is that Miss T applied to Shelby for the loan and therefore a positive assumption can be made that Miss T wanted the money.

The checks Shelby did carry out were proportionate and within the scope of the regulations with which Shelby had to comply. It would not have known of, nor would I expect it to have known of, Miss T's gambling. It's not likely that Miss T would have told Shelby about it. And I consider it to have been a disproportionate check for Shelby to have asked to review Miss T's bank account statements for any of these £200 loans.

My final decision

My final decision is that I do not uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss T to accept or

reject my decision before 26 July 2023.

Rachael Williams
Ombudsman