

complaint

Mr S complains that Express Finance (Bromley) Limited (formerly trading as Payday Express) made short-term loans to him when it shouldn't have.

background

From March 2011 to May 2011, Mr S took 4 short-term loans from a company he considers to be a sister company of Payday Express. I'll call that company "the sister company". Mr S didn't repay the sister company's loan 4 until March 2012.

From May 2012 to December 2012, Mr S took 7 loans from Express Finance (Bromley) Limited (then trading as Payday Express).

From late February 2015, a successor company took over the business of the sister company. At the same time, the successor company took over the business of Express Finance (Bromley) Limited.

In 2017 Mr S complained to the successor company that the sister company loans and the Payday Express loans had been irresponsible lending. The successor company accepted that the sister company's loans had been irresponsible.

The successor company also accepted that the Payday Express loans 3 to 7 shouldn't have been made. It offered to refund interest and charges on those loans and to add yearly interest at 8% less tax. Offsetting the balance outstanding on loans 3 to 7, the company said there would be about £50.00 payable to Mr S. He didn't accept that offer and brought his complaint to us.

our adjudicator's opinion

Our adjudicator considered the complaint against the successor company. He looked at the complaint about Payday Express loans 1 and 2. He didn't look at Payday Express loans 3 to 7 because of the offer to refund interest and charges.

At first, the adjudicator didn't recommend that the complaint should be upheld. He thought that the lender hadn't done the proportionate check of asking Mr S about his living costs and regular financial commitments. But such a check wouldn't have shown that Mr S couldn't afford repayment of Payday Express loans 1 and 2, the adjudicator said.

After Mr S referred the adjudicator to the earlier sister company loans 1 to 4, the adjudicator changed his view. He recommended that the complaint should be upheld. He thought that Payday Express loans 1 and 2 were in fact the 5th and 6th loans in a chain of borrowing.

That merited a full review of Mr S's financial situation. And that review would've uncovered that his spending on gambling was more than his entire monthly income. So Payday Express loans 1 and 2 weren't affordable, the adjudicator said. He recommended that Payday Express should:

1. refund all interest and charges that Mr S paid on all the loans;
2. pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;

3. remove any negative information about the loans from Mr S's credit file.

*HM Revenue & Customs requires Payday Express to take off tax from this interest. It must give Mr S a certificate showing how much tax it's taken off if he asks for one. If it intends to apply the refund to reduce any outstanding capital balance, it must do so after deducting the tax.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Mr S and to Payday Express on 9 October 2018. I summarise my findings:

I didn't agree with the adjudicator's view that the sister company loans 1 to 4 were part of the same chain as Payday Express loans 1 and 2.

I didn't think proportionate checks would've shown the lender that it shouldn't make Payday Express loans 1 and 2.

Proportionate checks would've shown that Mr S couldn't afford to repay Payday Express loans 3 to 7.

Subject to any further information from Mr S or from Payday Express, my provisional decision was that I was minded to uphold this complaint. I intended to direct Express Finance (Bromley) Limited (formerly trading as Payday Express) to (in relation to the Payday Express loans to Mr S on and after 9 November 2012):

1. refund Mr S (or credit his account) with each amount of interest and charges that it debited; and
2. pay Mr S simple interest at the yearly rate of 8% on each such amount from the date Mr S paid it to the date of the refund. If Payday Express considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate; and
3. remove from Mr S's credit file any adverse information about those loans.

Mr S accepted the provisional decision.

Payday Express also accepted the provisional decision. It said it would remove these loans from the customer's credit file. It said that it calculated the redress due as follows:

Interest and charges paid:	£400.12
8% interest:	£184.97
20% tax deduction:	£36.99
Total redress:	£548.09

Less outstanding balance of £546.77

Waived unpaid interest and charges £72.79

Final redress to customer £74.11

my findings

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

A lending business can make commercial decisions about whom to lend to and how much. But before agreeing to lend, the business has to check each time that the borrower can afford to make the repayments. And the checks it does must be proportionate.

When considering a complaint, we look at whether the business did checks proportionate to things like - but not limited to - the size of the loan repayments and the information it had about the borrower.

If the checks the business did were proportionate, we won't usually say that it shouldn't have agreed to the loan.

If we don't think the checks were proportionate, and if we think that proportionate checks would've revealed that the borrower couldn't afford the loan, we'll ask the business to put things right.

The Financial Ombudsman Service can only consider a complaint against one regulated financial firm at a time. The complaint I'm considering is Mr S's complaint about Payday Express loans 1 to 7. They were lent by Express Finance (Bromley) Limited (then trading as Payday Express). So I will deal with the complaint as a complaint against that company. That company is represented by the successor company.

By early 2012 Mr S had a history of borrowing from short-term lenders. That included the recent loans from the sister company. But in 2012 that company wasn't part of the same group as Express Finance (Bromley) Limited. So I don't agree with the adjudicator's view that the sister company loans 1 to 4 were part of the same chain as Payday Express loans 1 and 2.

From the records, the Payday Express loans to Mr S were as follows:

Loan No.	loan date	loan principal (£)	date loan repaid
1	21.05.12	320.00	07.11.12
2	30.09.12	80.00	07.11.12
3	09.11.12	250.00	
4	07.12.12	70.00	
5	12.12.12	90.00	
6	16.12.12	70.00	
7	18.12.12	70.00	

Before Payday Express loans 1 and 2, the lender recorded Mr S's normal monthly income as £1,550.00.

Payday Express loan 1 was going to require a repayment of about £410.00. That was going to take up a significant proportion of Mr S's income for the following month. So I think that proportionate checks would've been to ask Mr S not only about his monthly income but also about his normal living costs and regular financial commitments.

Mr S deferred repayment of Payday Express loan 1. He still hadn't repaid it when he asked for loan 2. On its own, loan 2 required a repayment of about £103.00. But Mr S still had to pay over £300.00 on loan 1. In any event I think that proportionate checks for loan 2 would've been to ask Mr S not only about his monthly income but also about his normal living costs and regular financial commitments.

There's not enough evidence that the lender asked about such costs and commitments. So I've thought about what's likely to have happened if the lender had done such proportionate checks before Payday Express loans 1 and 2.

From his bank statements, I don't think that Mr S's normal living costs and regular financial commitments were such that he couldn't afford the repayments. Rather it was his spending on gambling and short-term loans that left him short of money.

I don't think that Payday Express loans 1 and 2 had reached the point at which proportionate checks would've included asking Mr S about other short-term loans – or the point at which proportionate checks would've included asking for copies of his bank statements.

So I don't think proportionate checks would've shown the lender that it shouldn't make Payday Express loans 1 and 2. For that reason I don't find it fair and reasonable to order the lender to refund interest and charges or to remove from Mr S's credit file any adverse information relating to those loans.

On 7 November 2012 Mr S paid off Payday Express loans 1 and 2. Within a couple of days Mr S asked for Payday Express loan 3. It was going to require a repayment of about £322.00. That was going to take up a significant proportion of Mr S's income for the following month.

So I think that the lending had reached the point where proportionate checks would've been to ask Mr S not only about his monthly income, normal living costs and regular financial commitments but also about his other short-term financial commitments.

I think the lender should've maintained checks at that level or a higher level for loans 4, 5, 6 and 7.

There's not enough evidence that before loans 3 to 7 the lender asked Mr S about other short-term financial commitments. So I've thought about what's likely to have happened if the lender had done such proportionate checks.

Mr S had many other short-term loans throughout that time. For example in October 2012 he took out 4 other short-term loans totalling about £1,075.00 which he was going to have to repay – with high rates of interest. So I think that proportionate checks would've shown that he couldn't afford to repay Payday Express loans 3 to 7.

I think that if the lender had done proportionate checks on loans 3 to 7 it wouldn't have made those loans. But it did make those loans totalling £550.00. And it added interest and charges.

The successor company offered to refund interest and charges on Payday Express loans 3 to 7. It said this would reduce the outstanding principal balance to nil and leave about £50.00 to be paid to Mr S. He didn't accept that offer.

But Mr S had had the benefit of the principal sums. So I don't agree with his view that the lender should write off the principal as well as refunding interest and charges.

I'm minded to find it fair and reasonable to order the lender to refund interest and charges on loans 3 to 7. I also intend to order it to add interest at our usual rate. I will allow the lender to apply that refund first to clearing the principal balance before paying the remaining refund to Mr S.

As I don't think the lender should've made Payday Express loans 3 to 7, I will order it to remove from Mr S's credit file any adverse information about those loans.

my final decision

For the reasons I've explained, my final decision is that I'm minded to uphold this complaint in part. I intend to direct Express Finance (Bromley) Limited (formerly trading as Payday Express) to (in relation to the Payday Express loans to Mr S on and after 9 November 2012):

1. refund Mr S (or credit his account) with each amount of interest and charges that it debited; and
2. pay Mr S simple interest at the yearly rate of 8% on each such amount from the date Mr S paid it to the date of the refund. If Payday Express considers that it's required by HM Revenue & Customs to withhold income tax from that interest, it should tell Mr S how much it's taken off. It should also give Mr S a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate; and
3. remove from Mr S's credit file any adverse information about those loans.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 December 2018.

Christopher Gilbert
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