

complaint

Mr S complains about three loans Express Finance (Bromley) Limited (trading as Payday Express) lent to him. He says the loans were unaffordable.

background

From the information Payday Express has provided, it lent Mr S loans between July 2008 and June 2016. Some of the loan information is detailed in the table below.

loan number	start date	Amount (£)	end date
1	18/07/08	120	
1a	20/11/08	80	28/11/08
2	08/03/11	160	
2a	01/04/11	120	21/06/16

When Mr S complained to Payday Express it said he'd complained too late and so he referred his complaint to this service where it was looked at by one of our adjudicators. Our adjudicator thought that the complaint wasn't out of time and we could consider it. Payday Express agreed with this assessment. And so the merits of Mr S' complaint was looked at by another one of our adjudicators.

Our adjudicator thought that Payday Express hadn't lent loan 1a responsibly and recommended that Payday Express pay redress for that loan. But they didn't think Payday Express lent the other loans irresponsibly. As Payday Express hasn't responded, the complaint has come to me – an ombudsman for a decision.

my findings

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

When Payday Express lent loans 1 and 1a, it was during the period it held a standard licence from the Office of Fair Trading ("OFT"), which enabled it to carry out consumer credit activities. So while I think that businesses should always look to treat customers fairly, Payday Express also had an overarching responsibility to carry out a reasonable assessment as to whether Mr S was able to afford to repay what he had borrowed.

The OFT's Irresponsible Lending Guidance (ILG) came into effect in March 2010 and so this guidance was relevant to loans 2 and 2a. When it came into force, it stated that *"Assessing affordability is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties."*

Payday Express has told us what checks it carried out before agreeing to lend. It said it checked Mr S' income which it recorded as £1,050 throughout the lending. It also said it used Office of National Statistics (ONS) data to work out Mr S' monthly living expenses. At the time of loan 1 it recorded this as £259 and £260 for loan 2. Mr S has provided his bank statement and although it doesn't cover the time of loan 1, from what I can see, his normal living costs around the time of loan 2, were similar to what Payday Express used in making its lending decision.

Loan 1 was for £120 and given that this was a relatively small amount compared to Mr S' declared income of £1,050. It was also his first loan with Payday Express, I think the checks went far enough and the checks were proportionate to the lending.

Mr S rolled over loan 1 four times and by the time he was borrowing loan 1a, he hadn't repaid any of the original capital and interest on loan 1. In the circumstances, I don't think it was fair or reasonable for Payday Express to increase his level of indebtedness and so it shouldn't have given him loan 1a. The number of rollovers suggests that Mr S was struggling to repay and the fact that he then needed to borrow after so many rollovers should've concerned Payday Express and it shouldn't have continued to lend in those circumstances.

It was more than two years after Mr S repaid loan 1 /1a before he borrowed loan 2. I think this gap in time was significant and Payday Express could've reasonably believed Mr S' finances had improved. The loan was for £160 and given the information Payday Express held about his income and likely normal living expenses, it suggested that he could afford this loan. This was also the case for loan 2a. Mr S borrowed loan 2a about a month after loan 2, and although there was a balance outstanding, the available information, suggests that Mr S could afford to repay this loan and its top-up.

I understand that Mr S had problems repaying loan 2 and 2a and went into a payment plan but I think given that there was such a long gap between loans 1 and 2, it wasn't unreasonable for Payday Express to rely on the information he provided and what it gathered from ONS – particularly as his monthly living costs were similar to the figure Payday Express used.

Mr S has said he was gambling during the period but this wasn't something he told Payday Express and I wouldn't have expected it to find this out from what I consider reasonable checks in the circumstances.

In summary, Payday Express lent loan 1a to Mr S when it shouldn't have and he's lost out as a result so it needs to put things right.

putting things right – what Payday Express needs to do.

- refund all interest and charges Mr S paid toward loan 1a,
- pay interest of 8% simple a year on any refunded interest and charges from the date they were paid (if they were) to the date of settlement*;
- if there's an outstanding balance on loans 2/2a, Payday Express may deduct any outstanding balance from the redress but may only do this if it still owns the debt. If there isn't an outstanding balance then the full redress amount should be paid to Mr S,
- remove any adverse information about loan 1a from Mr S' credit file.

* HM Revenue & Customs requires Payday Express to take off tax from this interest. Payday Express must give Mr S a certificate showing how much tax it's taken off if he asks for one.

my final decision

I uphold Mr S' complaint in part and require Express Finance (Bromley) Limited to put things right as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 3 June 2019.

Oyetola Oduola
ombudsman