

**complaint**

Mrs W complains about payday loans she took out with Express Finance (Bromley) Limited, trading as Payday Express, ("EFL"). She said that EFL shouldn't have given her the loans as they were unaffordable.

**background**

Mrs W took out six payday loans and nine top up loans with EFL between June 2012 and July 2014 as follows:

Loan number	Date of Loan	Loan amount
1.	12/6/2012	£100
2.	1/8/2012	£200
3.	30/6/2013	£100
3a	12/7/2013	£100
3b	13/7/2013	£100
3c	3/9/2013	£100
4.	29/11/2013	£250
4a	7/12/2013	£100
4b	12/12/2013	£70
4c.	13/1/14	£70
4d.	28/1/2014	£70
5.	3/6/2014	£100
5a.	6/6/2014	£150
5b.	14/6/2014	£70
6	2/7/2014	£100

She said that the loans had trapped her in a debt spiral with the repayments taking so much of her wages that she had to borrow again to cover her next month's expenses. Her income was around £1,200 and her expenditure was around £1,170 so she said that this showed she couldn't afford the loans. Mrs W also said that her credit report would have shown other debt repayments and problems including late payments and defaults.

EFL said in its final response letter that the repayments for Loans 1 to 4a were low value and appeared to be affordable based on the information Mrs W had declared and its credit check. But EFL said about its remaining loans that it should have asked more questions and done more checks. It told Mrs W that if she provided her bank statements and credit report, it would look at these loans again. It also appears to have refunded the interest Mrs W paid on Loans 5a and 5b (but not the interest paid on Loan 5).

*our adjudicator's view*

The adjudicator said that EFL's checks weren't sufficient on Loans 1, 2, and 4 to 6. And she concluded that Loans 4 to 6 weren't sustainable. She said that EFL should:

- Refund all interest and charges that Mrs W paid on Loans 4 to 6;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement\*;
- Remove any negative information about Loans 4 to 6 from Mrs W's credit file

\*HM Revenue & Customs requires EFL to take off tax from this interest. EFL must give

Mrs W a certificate showing how much tax it's taken off if she asks for one.

EFL didn't provide a response to the adjudicator's view.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mrs W and to EFL on 14 May 2019. I summarise my findings:

I noted that EFL appeared to have refunded the interest paid on Loans 5a and 5b. So I said that I didn't intend to investigate these loans. But as the interest hadn't been refunded on Loan 5, I said that I would still investigate Loan 5 and would refer to Loans 5a and 5b to provide context for other borrowing and in my redress award later in the decision.

I explained that EFL was required to lend responsibly. It needed to make checks to make sure Mrs W could afford to repay each of the loans before it lent to her. Those checks needed to be proportionate to things such as the amount Mrs W was borrowing, the length of the agreements and her lending history. But there was no set list of checks it had to do.

But I said that the guidance in place at the time of Loans 1 to 4d was clear about the responsibility of the lender to take reasonable steps to ensure that a borrower could *sustainably* repay their loans. The Office of Fair Trading's ("OFT") Irresponsible Lending Guidance said that assessing affordability was a borrower-focussed test which involved 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. The guidance also said that repaying credit in a sustainable manner meant being able to repay credit "*out of income and/or available savings*" and without "*undue difficulty*." And it defined "*undue difficulty*" as being able to repay credit "*while also meeting other debt repayments and normal/reasonable outgoings*" and "*without having to borrow further to meet these repayments*".

Loans 5 onwards were regulated by the Financial Conduct Authority. Its regulations for lenders are set out in its Consumer Credit Sourcebook and are similar to those from the OFT in many respects.

EFL had told us about the checks it did before agreeing to lend to Mrs W. It said that it had made credit checks although I'd not seen the results of these. And I noted that it asked her about her income before all the loans and her expenditure from Loan 3 onwards.

For Loan 1, EFL had recorded Mrs W's income as £750. It didn't appear that EFL had obtained details of Mrs W's expenditure at this stage. I'd noted that the loan repayment amount of £129 was relatively modest compared to Mrs W's declared income of £750. And there was little to suggest to EFL at this stage that Mrs W wasn't using the loan in the way it was intended – as a short term solution to a temporary cash flow problem. So I didn't think EFL was wrong to agree to this loan.

Mrs W took out Loan 2 just over a month later and the repayment had doubled to £258. EFL appeared to have used the same income amount here. But I thought the repayment amount was a significant proportion of Mrs W's self-declared income. So I didn't think that it was proportionate for EFL to simply rely on Mrs W's self-declared income. I thought it would have been reasonable here for EFL to have at least enquired about Mrs W's normal living costs and regular financial commitments. I couldn't see that it did this.

Mrs W borrowed Loan 3 around nine months after Loan 2 was repaid. Loan 2 was repaid late as it appeared to have been deferred twice. But I thought the gap between repayment of Loan 2 and borrowing Loan 3 was a significant gap, and long enough to have made EFL think that Mrs W's finances had returned to a more secure footing. So I thought that EFL could have approached Loan 3 as though it was lending to Mrs W for the first time. The loan repayment amount was £129. And Mrs W had declared increased income of £1,200, housing expenses of £100 and credit repayments of £150. I'd also noted that EFL had considered statistical expenditure of £260.98. I thought the repayment amount was relatively modest compared to Mrs W's declared disposable income. And I thought it was proportionate for EFL to consider Mrs W's declared income and adjusted expenditure, without making further checks for Loan 3. So, I didn't think EFL had done anything wrong in giving Loan 3 to Mrs W.

Mrs W then topped up Loan 3 by £100 (Loan 3a) twelve days after taking Loan 3 out. Mrs W's disposable income remained the same. I thought the joint repayment amount for both Loans 3 and 3a was still relatively modest compared to Mrs W's disposable income. So at this stage of its lending, I didn't think EFL needed to make further checks for Loan 3a. But Mrs W then borrowed Loan 3b a day after Loan 3a. I thought the total repayment amounts for Loans 3, 3a and 3b were a significant proportion of Mrs W's income. I thought that EFL should have been concerned about the frequency of Mrs W's loan requests despite the amount of her disposable income. I thought they might have suggested to EFL that Mrs W was using short term loans as a supplement to her normal income, rather than using them to meet a temporary one-off problem. So by the time of Loan 3b I thought it would have been proportionate for EFL to have asked Mrs W whether she was taking short term loans from other lenders at the same time. I couldn't see that it did this.

It then appeared that Mrs W deferred repayment of some of her borrowing and she then borrowed Loan 3c around seven weeks after Loan 3b. In view of the deferred loans and frequency of the borrowing, I thought it would have again been proportionate for EFL to have asked Mrs W before Loan 3c if she was taking other short term loans at the same time. I couldn't see that it did this.

When Mrs W took Loan 4, the repayment amount had increased to £322.50 and her disposable income remained the same. I thought the number of deferrals and top ups taken by Mrs W might have suggested by that time that Mrs W's finances were under pressure. And I thought Mrs W's loans were by this time being taken sufficiently regularly to show that Mrs W was reliant on them. By this time, I also thought it should have been clear to EFL that it could no longer rely on the information Mrs W had provided, and that it should look in much more depth at Mrs W's true financial situation to assess the affordability of its lending. It could've done this in a number of ways. It could've asked for evidence of Mrs W's income and expenditure such as payslips and bills, or it could've looked at things like her bank statements. I didn't think it was proportionate at this stage in Mrs W's borrowing history to have still relied on the information declared by Mrs W and that shown in its credit checks. And for the same reasons when Mrs W took out four top ups (Loans 4a to 4d) to Loan 4 and Loans 5 and 6, I thought it would have been proportionate for the same checks to have been carried out as for Loan 4.

Although I didn't think the checks EFL did for Loans 2, and 3b to 6 were sufficient, that in itself didn't mean that Mrs W's complaint about these loans should succeed. I also needed to see whether what I considered to be proportionate checks would have shown EFL that

Mrs W couldn't sustainably afford Loans 2, and 3b to 6. So I'd looked at Mrs W's bank statements and where appropriate her credit report, and what she'd told us about her financial situation, to see what better checks would have shown EFL.

I'd noted that Mrs W's bank account was a joint bank account with her husband. Mrs W had explained to us that they each paid half of all household bills including the mortgage.

#### *Loan 2*

With regard to Loan 2, as I'd said above, I would have expected EFL to have asked Mrs W about her living costs and regular financial commitments. I'd looked at Mrs W's bank statements to see what better checks would have suggested to EFL, whilst taking account of Mrs W's declared income of £750. I'd noted from Mrs W's bank statements that normal living costs and regular financial commitments had amounted to around £2,200. So if Mrs W's share of the household bills amounted to £1,100 and if EFL had carried out what I considered to be proportionate checks before Loan 2, I thought it was likely that it would have concluded that Loan 2 wasn't sustainable.

#### *Loans 3b and 3c*

With regard to Loans 3b and c, as I'd said above, I would have expected EFL to have asked about Mrs W's other short term credit commitments whilst taking into account Mrs W's adjusted disposable income of £689.02. I'd reviewed Mrs W's credit report and noted that she'd taken out other short term lending of almost £1,600 at least part of which if not all required repayment around the same time as Loan 3b. I'd also seen Mrs W's bank statement for the month before Loan 3b which showed further borrowing of £925. Mrs W had told us that she had taken out all the short term loans. So if EFL had carried out what I considered to be proportionate checks before Loan 3b, I thought it was likely that it would have concluded that Loan 3b wasn't sustainable.

I'd also reviewed Mrs W's credit report with regard to Loan 3c and noted that she had other short term lending repayments of around £344 which required repayment around the same time as Loan 3c. I'd also seen Mrs W's bank statement for the month before Loan 3c which showed further short term borrowing of £975. I understood from what Mrs W had told us that she had taken this out. So, if EFL had carried out what I considered to be proportionate checks before Loan 3c, I thought it was likely that they would have suggested that Loan 3c wasn't sustainable. So as a responsible lender, I didn't think it would have considered this to be a sustainable loan.

#### *Loans 4 to 4d*

As I'd said above, by the time of Loan 4, I would have expected EFL to have made detailed checks on Mrs W's financial situation, for example by checking Mrs W's bank statements at the time of these loans. The bank statements might not have shown EFL everything it would've seen by carrying out proportionate checks. But I thought that the bank statements were the best indication of Mrs W's ability to afford the loans at the time they were approved. So I didn't think it was unreasonable to rely on these.

As I stated above the bank statements were joint bank statements. And as I'd said above, Mrs W said she paid for half of the living costs and that she had taken out any short term borrowing. If EFL had independently checked Mrs W's information, it would have seen that Mrs W was earning a little more than she'd declared, around £1,464. But, it also would have

become aware that her share of regular expenditure amounted to around £1,250 and she had taken short term loans totalling £400 which would have been repayable around the same time as Loan 4. So, if EFL had carried out what I'd considered to be proportionate checks before Loan 4, I thought it was likely that it would have concluded that Loan 4 wasn't sustainable. And I also thought it was likely that it would have concluded that the repayments for the top up loans to Loan 4 (Loans 4a to 4d) weren't sustainable for the same reasons.

#### *Loan 5*

If EFL had independently checked Mrs W's information before Loan 5, it would have seen that Mrs W was earning a little more than she'd declared, around £1,303. But, it also would have become aware that her share of regular expenditure amounted to around £1,090 and she had taken short term loans totalling £174 in the month before Loan 5 which would have been repayable around the same time as Loan 5. So, if EFL had carried out what I'd considered to be proportionate checks before Loan 5, I thought it was likely that it would have concluded that Loan 5 wasn't sustainable.

#### *Loan 6*

If EFL had independently checked Mrs W's information before Loan 6, it would have seen that Mrs W was earning around the same as she'd declared, around £1,247. She'd also appeared to have received additional income of £224 from her employer later that month. But, EFL also would have become aware that her share of regular expenditure amounted to around £1,163 and she had taken short term loans totalling £322 in the month before Loan 6 which would have been repayable around the same time as Loan 6. So, if EFL had carried out what I'd considered to be proportionate checks before Loan 6, I thought it was likely that it would have concluded that Loan 6 wasn't sustainable.

In summary I thought the checks EFL did for Loans 1, 3 and 3a were proportionate. But I didn't think EFL had done enough checks for any of the remaining loans. I thought proportionate checks would have shown EFL the state of Mrs W's finances and that she couldn't afford to sustainably repay Loans 2, 3b, 3c, and Loans 4 onwards. So, I thought that EFL needed to pay Mrs W some compensation relating to Loans 2, 3b, 3c, and Loans 4 onwards (other than the interest on Loans 5a and 5b which it had already refunded). To settle the complaint, I thought EFL should refund all the interest and charges applied to Mrs W's accounts for Loans 2, 3b, 3c, and Loans 4 onwards (excluding Loans 5a and 5b), and pay 8% simple interest on those refunds from the date of payment to the date of settlement. Any adverse information recorded on Mrs W's credit file with regard to Loans 2, 3b, 3c, and Loans 4 onwards should also be removed.

Subject to any further representations by Mrs W or EFL my provisional decision was that I intended to uphold this complaint in part. I intended to order Express Finance (Bromley) Limited, trading as Payday Express, to:

1. Refund all interest and charges that Mrs W paid on Loans 2, 3b, 3c, and 4 onwards (excluding Loans 5a and 5b);
2. Pay interest of 8% simple\* a year on all refunds from the date of payment to the date of settlement; and
3. Remove any adverse information about Loans 2, 3b, 3c, and 4 onwards from Mrs W's credit file.

\*HM Revenue & Customs requires EFL to take off tax from this interest. EFL must give

Mrs W a certificate showing how much tax it had taken off if she asks for one.

Both Mrs W and EFL responded to my provisional decision to say that they had no further comments to add, and EFL said that it agreed with my findings.

### **my findings**

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

Given that both Mrs W and EFL have given me nothing further to consider, I see no reason to depart from the conclusions I reached in my provisional decision. It follows that I uphold part of the complaint and require EFL to pay Mrs W some compensation as set out below.

### **my final decision**

My decision is that I uphold this complaint in part. In full and final settlement of this complaint, I order Express Finance (Bromley) Limited, trading as Payday Express, to:

1. Refund all interest and charges that Mrs W paid on Loans 2, 3b, 3c, and 4 onwards (excluding Loans 5a and 5b);
2. Pay interest of 8% simple\* a year on all refunds from the date of payment to the date of settlement; and
3. Remove any adverse information about Loans 2, 3b, 3c, and 4 onwards from Mrs W's credit file.

\*HM Revenue & Customs requires EFL to take off tax from this interest. EFL must give Mrs W a certificate showing how much tax it had taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs W to accept or reject my decision before 1 July 2019.

Roslyn Rawson  
**ombudsman**