

complaint

Ms M says Express Finance (Bromley) Limited (trading as "Payday Express") irresponsibly lent to her.

background

I attach my provisional decision of 11 April 2019, which forms part of this final decision. In my provisional decision I set out why I was intending to uphold Ms M's complaint. I invited both parties to make any further comments before I reached a final decision.

Following this, Payday Express responded confirming that it accepted my provisional decision and that it would pay compensation to Ms M. And Ms M didn't provide anything further for me to think about.

my findings

I have reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

I'm pleased to see that Payday Express has accepted my provisional decision and agreed to pay compensation to Ms M. And as neither party has provided anything further for me to think about, I see no reason to alter the conclusions I reached in my provisional decision.

my final decision

For the reasons set out above and in my provisional decision of 11 April 2019, I'm upholding Ms M's complaint. Express Finance (Bromley) Limited (trading as "Payday Express") should put things right in the way set out in my provisional decision of 11 April 2019.

Under the rules of the Financial Ombudsman Service, I am required to ask Ms M to accept or reject my decision before 18 May 2019.

Jeshen Narayanan
ombudsman

COPY OF PROVISIONAL DECISION

complaint

Ms M says Express Finance (Bromley) Limited (trading as “Payday Express”) irresponsibly lent to her.

background

This complaint is about eight payday loans Payday Express provided to Ms M between November 2009 and April 2012.

Our adjudicator partially upheld Ms M’s complaint and thought the deferrals from the third one on loan eight onwards shouldn’t have been given. Payday Express agreed but Ms M didn’t as she didn’t think that what Payday Express had agreed to do went far enough. As the parties were unable to agree the complaint was passed to me.

my provisional findings

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

Payday Express needed to take reasonable steps to ensure that it didn’t lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Ms M could repay the loans in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and the consumer’s income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that Payday Express should fairly and reasonably have done more to establish that any lending was sustainable for the consumer. These factors include:

- the *lower* a customer’s 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 *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the number and frequency of loans, and the longer the period of time during which a customer has been given loans (reflecting the risk that repeated refinancing may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

I think that it is important for me to start by saying that the rules and regulations in place meant that Payday Express was required to establish whether Ms M could sustainably repay her loans – not just whether the loan payments were affordable on a strict pounds and pence calculation.

Of course the loan payments being affordable on this basis might be an indication a consumer could sustainably make their repayments. But it doesn’t automatically follow this is the case. This is because the Office of Fair Trading Irresponsible Lending Guidance (“ILG”) defines in a sustainable manner as being without undue difficulties and in particular without incurring or increasing problem indebtedness, over the life of the credit agreement and out of income and/or available savings. And, in these circumstances, it follows that a lender should realise, or it ought fairly and reasonably to realise, that a borrower won’t be able to make their repayments sustainably if they’re unlikely to be able to make their repayments without borrowing further.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Ms M's complaint.

I've looked at the overall pattern of Payday Express' lending history with Ms M, with a view to seeing if there was a point at which Payday Express should reasonably have seen that further lending was unsustainable, or otherwise harmful. And so Payday Express should have realised that it shouldn't have provided any further loans.

Given the particular circumstances of Ms M's case, I think that this point was reached by loan three. I say this because:

- Ms M was provided with loan three within days of eventually settling loan two. I say eventually settle because Ms M deferred loan two on three occasions and the amount requested for loan three was the same as what had been belatedly repaid. So Payday Express ought to have realised it was more likely than not Ms M was having to borrow further to cover the hole repaying her previous loan was leaving in her finances and that Ms M's indebtedness was increasing unsustainably.
- From this point onwards, Ms M wasn't making any real inroads to the amount she owed Payday Express. Loan eight was taken out two and a half years after Ms M's first. And it was for a significantly larger amount. Ms M had paid large amounts of interest to, in effect, service a debt to Payday Express over an extended period. Indeed I'm especially concerned at the fact that Payday Express continued to lend to Ms M despite the significant number of deferrals on some of these loans.

I think that Ms M lost out because Payday Express continued to provide borrowing from loan four onwards because:

- these loans had the effect of unfairly prolonging Ms M's indebtedness by allowing her to take expensive credit intended for short-term use over an extended period of time.
- the sheer number of loans and deferrals was likely to have had negative implications on Ms M's ability to access mainstream credit and so kept her in the market for these high-cost loans.

So I'm intending to uphold the complaint about three to eight and say that Payday Express should put things right.

putting things right – what I'm intending to say that Payday Express needs to do

- refund all interest and charges Ms M paid on loans three to eight;
- 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†;
- the number of loans taken from loan three onwards means any information recorded about them is adverse. So all entries about loans three to eight should be removed from Ms M's credit file.

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

my provisional decision

For the reasons I've explained, I'm intending to partially uphold Ms M's complaint and tell Express Finance (Bromley) Limited (trading as "Payday Express") to pay redress as set out above.

So unless the comments and evidence I get by 25 April 2019 changes my mind, that's what I'll tell Payday Express to do in my final decision.

Jeshen Narayanan
ombudsman