

complaint

Mr P complains that Express Finance (Bromley) Limited (trading as Payday Express) shouldn't have provided him with loans which he says were unaffordable during 2010 and 2011.

background

Mr P complained to Payday Express about the loans he'd been provided with. It didn't respond to his complaint but did provide him with a statement of account. So he brought his complaint to this Service.

We asked Payday Express to send us its file. As it didn't, our adjudicator looked into Mr P's complaint with only limited information. From the statement of account she thought that there had been ten loans made to Mr P. Since Payday Express hadn't told us about the checks it had made before lending money to Mr P, she looked to see whether if it had done enough checks it would've concluded that the advances were affordable (or not) for him. She thought that none of the loans were affordable for Mr P except the second one advanced in July 2010 because there had been a change in Mr P's circumstances shortly before. So she asked Payday Express to refund the charges and interest he had paid on all the loans apart from the second one together with some additional interest. She also asked Payday Express to remove adverse entries in Mr P's credit file about the loans she thought shouldn't have been provided.

Having sent her assessment to Payday Express and Mr P our adjudicator sent a reminder to Payday Express to ask it for a response. As nothing was received she told the parties that Mr P's complaint was being referred to an ombudsman for a final decision.

We then received some information from Payday Express. In its letter Payday Express made an offer in respect of some of the later advances it made to Mr P.

It accepted that the last two loans provided to Mr P were taken on the same day the customer settled his previous loans and the last loan was also for a higher amount than his previous loans. It said it would be willing to refund the interest paid on those last two loans plus 8% interest. It was also willing to waive the additional interest and charges applied to the last loan at the time it fell into arrears. Finally, as a gesture of goodwill Payday Express said it would be willing to then waive the remaining balance in full and final settlement of the Mr P's complaint. So the outstanding balance would be written off and it would remove the entries from Mr P's credit file.

Our adjudicator sent the details of Payday Express's offer to Mr P. He didn't accept the offer and thought that there is no outstanding balance owed to Payday Express.

A few weeks ago I considered Mr P's complaint and I issued a provisional decision in which I explained why I was minded to uphold all of Mr P's complaint. As this was different to what our adjudicator had recommended, and in fairness to the parties, I invited them to let me have anything else they wanted me to consider before I made my final decision.

Mr P has confirmed that he hasn't anything more to add. Payday Express has provided me with a response to my provisional decision – it doesn't agree with my provisional conclusions although it is willing to refund the interest Mr P paid from loan 4 onwards.

my findings

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

This is an extract from my provisional decision:

As part of the loan application process Payday Express had to check that Mr P could afford to repay the loan. There's no set list of what a lender should do to check affordability in every case. But checks should be proportionate to things like the size of the loan, the repayments, what the lender knows about the consumer and what the consumer tells the lender about their circumstances.

I mention above that our adjudicator concluded that there had been ten separate loans. Payday Express suggests (it hasn't completely clarified this) that there were only seven loans because there were top-ups – one top-up to loan 4 and two to loan 7 as follows:

Loans according to Payday Express	date taken	principal amount - £
1	20/05/10	200
2	23/07/10	200
3	29/10/10	320
4	13/12/10	120
top up	29/12/10	200
5	14/09/11	160
6	30/09/11	400
7	01/11/11	280
top up	07/11/11	120
top up	16/11/11	250

But it seems that these were not ordinary loans where the principal sum is deposited into a borrower's account and repaid with interest within a specified period. I understand from Payday Express that it provided Mr P with a credit limit, up to which he could draw down capital. It says that in May 2010 it provided Mr P with a credit limit of £400 which he could "opt to use at any time".

But it also refers to the "first two loans" being £200 and says that Mr P didn't use all the credit available to him. This is further confused because the screen shot of some credit check information it has provided shows that the loan being applied for was also £200 (not £400). But it seems to me that Payday Express provided Mr P with a credit facility in May 2010 which would allow him to draw down up to £400.

Payday Express hasn't provided a copy of the credit agreement for that loan but has shown us the one from September 2011. This states that the amount of credit being provided is £160 and that the amount due (if the £160 was fully drawn down) was £200 within 16 days.

In the absence of the earlier agreements I haven't seen anything to suggest that they would've been very different to this one. So I think it's likely that the first agreement would've been similar and would've stated that the amount of credit was £400 and – in light of the information in the statement of account - the total amount of interest due would be £100. In other words if Mr P drew down the full £400 he would be required to pay that back plus the interest within a relatively short period, of probably a few weeks – a total of £500.

Payday Express isn't able to show us any more of the details it obtained from the credit checks it did. It points out that different agencies are likely to have shown different things. And I accept this. But it also says that the agency it used, provided details using a specific scoring system. If the consumer's score was under an identified level it meant that the consumer wasn't in financial difficulty. As Mr P's score was below that Payday Express didn't undertake any additional checks. But as Payday Express will be aware the fact that someone is not in financial difficulties doesn't necessarily means that they can afford to repay a loan in a sustainable way – consumers sometimes borrow from somewhere else to avoid defaulting and appearing to be in difficulties. The information from the credit agency used by Payday Express appears to have been quite limited.

And at the very least I would've expected Payday Express to enquire about Mr P's income. But Payday Express hasn't shown me what it did or didn't do in that regard. Mr P tells us that his monthly salary was around £2,650. But given the size of the potential drawdown I think Payday Express should also have asked Mr P about his normal expenses. It doesn't seem that it did. So I'm not persuaded that Payday Express did enough in May 2010 to ensure that its new customer - Mr P - was going to find his loan affordable.

I've looked at Mr P's bank statements from around the time. I accept that Mr P didn't draw down the full amount of credit to him immediately. But it was open to him to do so. And I'm currently satisfied that his normal outgoings exceeded his income and he wouldn't have been able to repay the full amount without resorting to further borrowing. From what I've seen it would've been difficult to repay even the lower amount he actually drew down.

Our adjudicator thought that the advance in July 2010 was a separate loan and concluded that it was probably affordable for Mr P. It seems it wasn't a separate advance but was a further drawdown on the earlier May agreement. I've already explained why I think that Payday Express shouldn't have agreed to lend Mr P money under the terms of that first agreement. So I don't think I need make a finding here – this drawdown was part of an agreement which I don't think should've been made.

But in any event I've looked at Mr P's circumstances and the large deposit received into his account on 1 June which our adjudicator put some weight on. I understand that this payment of just over £11,000 followed the sale of Mr P's house. I understand it had to be sold because of the family's financial problems. I can see that within a few weeks most of this money had left Mr P's account – apparently to meet other credit commitments. For example I can see that more than £4,000 went to a credit card provider. So even if the second advance had been made under a separate agreement I'm not persuaded that it was affordable for Mr P.

In the absence of confirmation from Payday Express, it looks as though the drawdowns made in October and December 2010 were made under separate agreements. And as the sums drawn down stayed below £400 it looks like this was still the credit limit available to Mr P. If that isn't correct, Payday Express can provide me with the details in response to this provisional decision.

I acknowledge what Payday Express says about the sums involved and the gaps in the borrowing. But it doesn't seem that it made any further enquiries about Mr P's circumstances to establish whether he would be able to repay what he borrowed without resorting to further borrowing either from Payday Express or other lenders. In particular I don't agree with Payday Express when it says "As there were no issues with the repayment of the first three loans there was no cause for concern". This agreement involved short-term, high interest lending to Mr P who was showing a dependency on borrowing. And Mr P's financial situation was deteriorating. This is demonstrated by the fact that after he took the top-up on 29 December 2010 he didn't actually manage to repay the capital until July 2011 and he appears to have been charged for a default too.

But nevertheless Payday Express continued to provide further credit to Mr P without making any more checks. And in November 2011 Mr P was advanced a total of £650, which in the circumstances I describe above shouldn't have been provided.

So I propose upholding all of Mr P's complaint. Payday Express says that there is a balance outstanding which Mr P owes to it. He doesn't agree and says he thinks that what was owed was collected by a third party agency. He hasn't been able to show us the details so I would ask Payday Express to confirm the exact situation in regards to any balance outstanding. This is because if there is some capital still owed to it by Mr P I will allow Payday Express to deduct that sum from the compensation I require it to pay him.

In its response to my provisional decision Payday Express hasn't commented on my understanding of what happened in 2010 and 2011 in relation to the loans it provided to Mr P. So it seems that what I described in my provisional decision was broadly correct.

Payday Express says that as I confirmed Mr P's income was £2,650, the loans are proportionate to that. But the question is not whether the loans were proportionate to income. Rather whether the checks Payday Express carried out, to ensure that the credit it provided to Mr P, were proportionate.

Payday Express goes on to say that I haven't indicated any specific guidance I've relied on from the time. But I did confirm in my provisional decision that I'd taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

The guidance in 2010 wasn't specific about the sort of checks to be undertaken. It said that the extent and scope of an assessment of affordability should be dependent upon – and proportionate to - a number of factors such as the type of credit, the amount of credit being provided and the associated cost and risk to the borrower, the borrower's financial situation at the time and the borrower's credit history - including any indication of the borrower experiencing or having experienced financial difficulty, the borrower's existing and future financial commitments - including any repayments due in respect of other financial products and significant non-credit commitments and the impact of a future change in the borrower's personal circumstances.

I accept that it may have been disproportionate to require Payday Express to consider every factor mentioned in the guidance every time it provided credit to Mr P. But I think that whatever means and sources of information Payday Express employed as part of its assessment of affordability for Mr P, they should've been sufficient to enable Payday Express to work out whether repayment of the loans was going to be unsustainable for him. This involved more than just assessing the likelihood that Mr P would be able to repay the credit in question. So in summary, Payday Express should've taken reasonable steps to assess Mr P's likely ability to meet repayments under the credit agreements without having to resort to further borrowing.

Payday Express adds that it feels in this instance the checks completed were sufficient and some reliance must be put on Mr P for applying for a loan he did not feel was affordable. But Payday Express was a business which was expected to comply with the guidance available at the time. It was providing short-term, high cost credit to its customers. And because of the nature of its business it was regulated. Given the broader circumstances of Mr P's applications for credit I don't think that the checks Payday Express did were sufficient. And although I've considered everything Payday Express has said carefully I don't think it's provided me with anything so compelling that I'm persuaded to change my provisional conclusions.

So I uphold Mr P's complaint about all of his loans from Payday Express.

putting things right

Payday Express has now confirmed that it instructed a third party to recover the outstanding balance from Mr P. It says that it received a payment of £630 and would be willing – as a gesture of goodwill to waive the outstanding £420 – because it thinks that the total amount outstanding is £1,050.

And Payday Express adds that the principal loan amount was £750 and that Mr P has paid £120 less than the original principal balance. I disagree with these figures.

From Payday Express's statement of account Mr P had cleared his earlier balances by 28 October 2011. In November he took three principal amounts to which interest was added as follows:

- 1 November principal £280 plus interest £70
- 7 November principal £120 plus interest £30
- 16 November principal £200 (not £250 as stated in my table) plus interest £50

So Payday Express didn't lend Mr P £750 as it stated in its response to my provisional decision. It only lent him £600 by way of three principal advances. I made an error in my provisional decision when I stated £650. Payday Express seems to have included the £150 interest in its calculation – but it shouldn't have.

From 30 November various extension fees and default charges were added to Mr P's account. It seems that nine relatively small payments were made by Mr P. But according to the statement of account Mr P owed Payday Express £1,050 by the end of January 2012 – much of which was made up of fees and charges.

But Payday Express accepts that it's received £630 through the third party, which more than meets the principal sum of £600 which was loaned. In fact Mr P seems to have overpaid by £30. This £630 payment doesn't appear on the statement of account. As there aren't any principal sums outstanding I don't agree that Payday Express can deduct any sums from the amounts in A. and B. below. This is because it shouldn't have made the advances to Mr P and so he's not liable for the interest, fees and charges which were added.

So, as I'm satisfied that Payday Express shouldn't have provided any of the credit it did to Mr P in 2010 and 2011, I require Express Finance (Bromley) Limited to:

- A. refund all interest and charges Mr P paid for all of the advances he received from Payday Express and
- B. to each of these sums Payday Express must add 8%* simple interest a year, from the date Mr P paid them to the date of settlement.
- C. And remove any adverse entries relating to these advances from Mr P's credit file.

Apart from the tax which I mention in the paragraph below, Payday Express should not make any deductions from the compensation it pays Mr P. And it should provide him with written confirmation that there is no outstanding balance owed to it by him.

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

my final decision

For the reasons above and in my provisional decision I uphold Mr P's complaint and I require Express Finance (Bromley) Limited to put things right as outlined.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 28 December 2016.

EJ Forbes
ombudsman