

complaint

Miss L complains that Express Finance (Bromley) Limited (trading as Payday Express) was irresponsible to lend money to her.

background

From what I've seen, Miss L took out two payday loans with Payday Express.

The first, for £200, was taken on 1 February 2013. Miss L deferred the loan 12 times.

The second, for £285 was taken on 5 February 2014. Miss L deferred the loan once but it was defaulted not long after

I issued a provisional decision in December 2016 where I explained why I thought Miss L's complaint should be upheld. I said:

Before agreeing to lend to Miss L, Payday Express had to check each time that she could afford to repay the loans. There is no set list of checks that Payday Express had to carry out. But the checks had to be proportionate to things like – but not limited to – the size of the loan, the repayments and what Payday Express knew about Miss L.

I don't know what Payday Express did to check whether Miss L could afford to repay her loans as it's not sent us any information about them. So I've considered what Payday Express would likely have done if it had carried out proportionate checks.

Miss L's first loan was for £200 and from what I've seen it looks like her income was around £1,500 at the time. Based on the kind of information I think proportionate checks would've established for this loan I think Payday Express would've still agreed to it. So I don't think it was wrong for it to lend.

But after that Payday Express allowed Miss L to defer the loan 12 times. The Consumer Finance Association (CFA) Lending Code for Small Cash Advances – published in July 2012 – says that 'members shall not allow customers to extend a short term loan on more than three occasions'. The code says that Payday Express was a member of the CFA. And even if it wasn't I think the code represents what was considered good industry practice. So I think it was unreasonable to allow Miss L to extend the loan any more than three times.

Payday Express knew that Miss L had taken a year to repay £200 before it agreed to her second loan. And now she wanted to borrow more. So I think Payday Express needed to do more this time to satisfy itself that Miss L could repay the loan in a sustainable way.

There were many ways that Payday Express could've done this. It could've asked Miss L for things like her pay slips and evidence of her expenditure. Or it could've looked at her bank statements as I have done. And I think if it had done this it would've realised that it shouldn't lend to Miss L. Miss L was gambling more than she was earning around the time of the loan so she would've struggled to repay the loan in a way that was sustainable.

Overall I don't think Payday Express should've allowed Miss L to extend her first loan any more than three times and shouldn't have agreed to the second loan. It should refund interest and charges for these periods and remove any related adverse information from Miss L's credit file.

I asked both Miss L and Payday Express if they wanted to come back with any more comments or evidence.

Neither Miss L nor Payday Express sent me anything new before the deadline set out in the provisional decision. So I'm going to make a final decision on the complaint.

my findings

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

As Miss L and Payday Express haven't sent me any new comments or evidence since my provisional decision, I see no reason to change what I said in it. So I still think Miss L's complaint should be upheld in part and for the same reasons.

my final decision

My final decision is that I uphold Miss L's complaint in part. To put things right Express Finance (Bromley) Limited should:

- refund any interest and charges Miss L paid on the first loan from 22 April 2013 onwards and all interest and charges on the second loan;
- add simple interest at a rate of 8% per annum to each of these amounts from the date they were paid to the date of settlement*;
- write off any interest and charges on the second loan that Miss L hasn't paid.
- deduct any capital still owing from the compensation due;
- remove any adverse information recorded on Miss L's credit file in relation to the loans (and periods) I am asking to be refunded.

If Express Finance (Bromley) Limited sold the remaining debt to a third party debt purchaser it should buy the debt back before doing what I've said above. If this isn't possible it should (in addition to the above if necessary):

- arrange to repay any portion of the sum due to the third party that is made up of interest and charges – including any added by the third party;
- refund Miss L any interest and charges she has already paid to the third party plus 8% interest simple per annum on each amount from the date of payment to the date of settlement*.
- Instruct the third party to remove any adverse information it may have recorded about the loans.

*HM Revenue & Customs requires Express Finance (Bromley) Limited to take off tax from this interest. Express Finance (Bromley) Limited must give Miss L a certificate showing how much tax it's taken off if she asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 20 February 2017.

Michael Ball
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