

## **complaint**

Mr H complains about eight payday loans he took out with Express Finance (Bromley) Limited, trading as Payday Express, ("EFL"). He said that EFL shouldn't have given him the loans as they were unaffordable. He wants the loans removed from his credit file.

## **background**

Mr H took out eight payday loans with EFL as follows:

1. £120 27 August 2012
2. £100 10 October 2012
3. £150 31 October 2012
4. £200 8 December 2012
5. £100 6 July 2013
6. £260 31 July 2013
7. £200 2 October 2014
8. £150 15 November 2014

Mr H said that the loans were unaffordable, and wants EFL to remove the loans from his credit file.

## *our adjudicator's view*

The adjudicator concluded that Loans 1 and 2 were affordable and EFL's affordability checks were proportionate. She said that Loans 3 and 4 were also affordable although the checks weren't proportionate. But she didn't think that the checks for Loans 5 to 8 were proportionate and neither were the loans affordable.

She had seen Mr H's bank statements showing his income and expenses around the time he took the loans. He'd also provided his credit file and other information to show his financial circumstances. She'd calculated that Mr H's disposable income was £130 before Loan 5 without even considering what he was paying for food and towards other payday loans. So, as Mr H was due to repay £129 towards his fifth loan, she didn't think that Loan 5 was affordable. She also noted that Mr H's financial circumstances didn't improve after Loan 5 was approved, although his salary increased when he took Loan 7. He was repaying two loans as well as repaying other financial debts using a debt charity. His bank statements also showed regular online gambling transactions, which she thought should have alerted EFL that any further form of borrowing wouldn't have been sustainable for him. She said that EFL would have seen this, had it carried out proportionate checks each time Mr H applied for credit. So she said that EFL should:

- refund all interest and charges that Mr H paid on the loans from loan 5 until (and including) loan 8;
- pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement;
- write off any unpaid interest and charges of any outstanding loans, apply the refund to reduce any capital outstanding and pay any balance to Mr H; and
- remove any negative information about the loans from Mr H's credit file.

Mr H agreed with the adjudicator's recommendations.

EFL agreed to the adjudicator recommendations with regard to Loans 5 and 6, but disagreed with them in respect of Loans 7 and 8. It said that its credit check before Loan 7 showed a low level of indebtedness with no defaults, county court judgements or insolvencies. It also said that Mr H had provided details of his expenditure before Loans 7 and 8 which he'd said was accurate. EFL also said that it wasn't required to obtain bank statements as part of its affordability assessment and Mr H's gambling transactions wouldn't have been revealed to it in its credit checks.

*my provisional decision*

After considering all the evidence, I issued a provisional decision on this complaint to Mr H and to EFL on 27 July 2017. I summarise my findings:

I noted that EFL was required to lend responsibly. I said that it should have made checks to make sure Mr H could afford to repay each of the loans before it lent to him. Those checks needed to be proportionate to things such as the amount Mr H was borrowing, and his lending history. But there was no set list of checks EFL had to do.

As EFL had disagreed with the adjudicator's recommendations for Loans 7 and 8, I said that my decision would just deal with the credit assessment for those loans.

I noted that the repayment amount for Loan 7 was £258. It was taken out on 2 October 2014 and repaid on 28 October 2014. The repayment amount for Loan 8 was £193.50. It was taken out on 15 November 2014 and repaid on 28 November 2014.

I explained that when Loan 7 was taken out, Mr H told EFL that his monthly income had increased to around £1,140 (from around £760) and it had carried out a credit search. As this loan was taken out around 14 months after Mr H's last loan with EFL, I thought that was a significant gap, and long enough to make EFL think that Mr H's finances had returned to a more secure footing. So I thought that EFL could have approached Loan 7 as though it were lending to Mr H for the first time. EFL also said that for Loans 7 and 8, Mr H completed his expenditure details which he declared to be correct and in conjunction with the credit search results prior to Loan 7, this helped it to make the correct lending decision.

I'd thought about whether EFL's checks were proportionate for both loans. There was a previous lending history with all but one of the loans paid on time, and only Loan 4 had been paid a few days late. But as the loans accounted for a relatively large proportion of Mr H's income, I'd agreed with the adjudicator that EFL's checks weren't proportionate. I thought sufficient checks for both loans would have also looked at Mr H's regular outgoings for his living costs and his regular financial commitments. I noted what EFL had said about the receipt of expenditure details from Mr H, but I'd not seen what was provided. So, I couldn't be sure that all information about living costs and financial commitments was obtained. I also noted what EFL had said about its credit check information. But, I didn't think that EFL's findings that Mr H had no defaults, wasn't insolvent and didn't have a judgment against his name was enough to be a proportionate check.

I'd looked at Mr H's bank statements for the month before Loan 7 was made to try to establish what proportionate checks might've shown at the time Mr H asked for his loans. I'd also noted that in January 2014 Mr H had completed a personal budget sheet which showed his regular expenses at £344.10. Mr H's bank statement for September 2014 showed these (rent, travel, phone – although the phone was £1.04 higher than in January 2014). The statement also showed his regular loan repayments of £365. This left Mr H with around £430

after deduction of these amounts from his income. As the loan repayment was £258, I could see that this would still have left Mr H with £172 for contingencies. So, I thought that if EFL had seen information about Mr H's regular living costs and financial commitments, it wouldn't have been unreasonable for it to say that Loan 7 was affordable. And whilst I noted that Mr H spent a large amount on gambling, I didn't think it would have been proportionate in these circumstances for EFL to have required sight of Mr H's bank statements. So, I could see that it wouldn't have known about Mr H's gambling transactions.

With regard to Loan 8, I noted from Mr H's bank statement that his income had increased to around £1,258, his regular living costs were the same and his regular financial commitments appeared to have reduced to £280. So, I could see that Mr H's monthly disposable income at the time of Loan 8 was around £630. As the Loan 8 repayment was £193.50, I could see that Mr H would have been left with around £436 for contingencies. So, taking everything into account, I thought it was reasonable for EFL to go ahead and make Loan 8.

Whilst I had sympathy for the position Mr H found himself in, I explained that I could only uphold Mr H's complaint if I was satisfied that Loans 7 and 8 would have appeared unaffordable to EFL after proportionate checks. I didn't think that proportionate checks had been made for Loans 7 and 8. But, having looked at Mr H's bank statements covering the period in which he was borrowing from EFL, I wasn't convinced that proportionate checks would have shown that the loans weren't affordable. So I didn't think it was irresponsible for EFL to make Loans 7 and 8 to Mr H.

So, as EFL had agreed with the adjudicator's recommendations for Loans 5 and 6, and subject to any further representations by Mr H 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:

- refund all interest and charges Mr H paid on Loans 5 and 6;
- pay interest on those refunds at 8% simple\* per year from the dates of payment to the date of settlement;
- remove any adverse information about the loans from Mr H's credit file.

\*HM Revenue & Customs requires EFL to take off tax from this interest. It must give Mr H a certificate showing how much tax it has taken off if he asks for one.

EFL responded to say that it had no further information to add.

Mr H disagreed and responded to say that it was incorrect that EFL had said that he had no defaults. His bank had defaulted his current account in October 2013. He thought that if EFL had noted this, it wouldn't have given him the loans. He also said that the gap between Loans 6 and 7 didn't mean that the loans were affordable. In addition, he said that he was in a loan repayment scheme at the time.

### **my findings**

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

I note from Mr H's credit file that his current account was defaulted around a year before Loan 7. I can see that EFL's credit check before Loan 7 did show one delinquent account around 12 months before. So, EFL should have known that all was not well because of the delinquent marker. But, I don't agree with Mr H that EFL wouldn't have given him the loan if it had known about the default. The existence of a default might have been a factor in EFL's decision, but the default in itself doesn't mean a loan shouldn't be given.

I agree with Mr H that the gap between Loans 6 and 7 didn't necessarily mean that the loans were affordable. But, in view of the gap, I would have reasonably expected EFL to treat its assessment for Loan 7 as if it was assessing a first loan. In this case, because of the amount of Mr H's income and the size of the loan, I would have expected EFL to consider Mr H's normal living costs and regular financial commitments in its assessment as detailed above.

I also note that Mr H refers to being in a loan repayment scheme. I had already noted this from Mr H's bank statements and included his repayment in my calculation of his regular financial commitments above.

So having considered the additional information Mr H has given us, and everything I saw before making my provisional decision, I still don't think EFL acted incorrectly in providing Loans 7 and 8 to Mr H.

### **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:

- refund all interest and charges Mr H paid on Loans 5 and 6;
- pay interest on those refunds at 8% simple\* per year from the dates of payment to the date of settlement;
- remove any adverse information about the loans from Mr H's credit file.

\*HM Revenue & Customs requires EFL to take off tax from this interest. It must give Mr H a certificate showing how much tax it has taken off if he asks for one.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 30 October 2017.

Roslyn Rawson  
**ombudsman**