

## complaint

Mr H complains that Express Finance (Bromley) Limited (trading as Payday Express) gave him loans that he couldn't afford to pay back.

## background

Mr H borrowed a total of six times from Payday UK between August 2012 and July 2014.

Loan number	date taken	amount borrowed	deferrals	date repaid
1	4 August 2012	£100	n/a	28 August 2012
2	13 November 2013	£100	2	19 February 2014
Top-up 1	15 November 2013	£100	2	19 February 2014
Top up 2	25 November 2013	£120	2	19 February 2014
3	20 June 2014	£100	n/a	18 July 2014
4	28 July 2014	£100	n/a	24 December 2014

Mr H told Payday Express that he was having difficulties repaying the second loan, as well as the two top ups and the last loan and it agreed to set up payment plans for these.

The adjudicator thought Mr H's complaint should be upheld in part. She thought that Payday Express had carried out sufficient checks for the first two loans but its checks didn't go far enough to make sure Mr H could afford the two top up loans or loans three and four. And she said that if it had carried appropriate affordability checks, it wouldn't have given these loans to Mr H. So she asked Payday Express to refund interest and charges and pay interest on the refunded amount for those loans and remove any adverse information about them from Mr H's credit file.

Payday Express didn't agree that the top ups and last two loans were unaffordable. And it said, in summary, the relevant guidance at the time of the loans says it didn't have to make as detailed checks as the adjudicator said it should.

## my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Having done so, I agree with the conclusions reached by our adjudicator for broadly the reasons given.

Payday Express was required to lend responsibly. Before agreeing to lend to Mr H, it had to check each time that he could afford to make the repayments without it adversely impacting on his financial situation. The checks it did had to be proportionate and enough so that Payday Express could make an informed decision on the lending.

What's proportionate depends on things like – but not limited to – the size of the loan repayments and the information Payday Express had about Mr H. But there's no set list. The guidance and rules don't set out compulsory checks but they do list a number of things a lender might wish to take into account before agreeing to lend, including things such as the amount being lent and when what's being borrowed is due to be repaid.

So it's clear that a lender must take reasonable steps to ensure that a borrower can *sustainably* repay their loans. And even though Mr H eventually managed to repay his loans

in full, it doesn't automatically mean the loans were affordable for him or that he managed to repay them in a sustainable manner. He did report difficulties in repaying loan two as well as the top ups and the final loan. And even though he set up payment plans to do this, I still can't assume that that he was able to do so out of his normal income without having to borrow further.

#### *loans one and two*

Payday Express has told us that it asked Mr H about his monthly income before agreeing to lend to him. It recorded this as £1,040 for the first two loans (and top ups) and £1,200 thereafter. It did credit and identity checks too. It also asked him for details of his normal expenditure for loan two. I think these checks were sufficient.

#### *top ups and loans three and four*

By the time Mr H asked for his first top up loan (just two days after taking loan two) I consider Payday Express should have had some concerns about Mr H's ability to meet his repayments. I think it should have asked him about his other financial commitments and any other short term borrowing. If it had done so it would have seen that his declared income was £1,040, normal living expenses were £620 and he had other borrowing of almost £800. So he couldn't comfortably make his repayment.

Furthermore, when he asked for the second top up 10 days later this should have led Payday Express to examine his financial circumstances in some detail because he had already topped up the loan and deferred his payments. I think Payday Express should have asked him for evidence of his income and outgoings, such as payslips or copies of bills. Or it could've looked at Mr H's bank statements

I also find that for loans three and four Payday Express should have carried out full checks to assess whether the loans were affordable. His income was £1,100, normal living expenses were in excess of £700 and he had other borrowing due for repayment of at least £500. His bank statements also show that Mr H was spending a significant amount on gambling each month. So I think Payday Express would have seen that Mr H didn't have enough to pay back any of these loans and he was borrowing to cover the gambling payments as well as other short term loans. I'm satisfied that he couldn't afford them and he shouldn't have been given them.

#### **putting things right**

I don't think Payday Express should have agreed to lend to Mr H for the loans that he took from 15 November 2013 onwards. So for each of those loans it should:

- Refund any interest and charges applied to the loans (although I note it refunded one fee of £15 for arrears in November 2014)
- 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\*\*
- Remove any adverse information recorded on Mr H's credit file in relation to the loans.

\*\* If Payday Express considers it has to deduct tax from the interest element of my award, it should send Mr H a tax deduction certificate showing how much tax it's taken off if he asks for one.

**my final decision**

My final decision is that I largely uphold Mr H's complaint and direct Express Finance (Bromley) Limited to put things right as detailed above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 9 October 2017

Karen Wharton  
**ombudsman**