

complaint

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

background

Mr Y complained to Payday Express about the loans he'd been provided with. It issued a final response to Mr Y but he didn't agree with the outcome and he said some of the figures about the loans quoted by Payday Express in its final response were wrong. 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 Y's complaint with only limited information. From the information available – specifically Mr Y's bank statements, she thought that there had been five loans made to Mr Y. I'll list the loans (and the repayments I can see that Mr Y made) below:

Date funds credited to account	Amount	Payment dates and deferral dates (taken from bank statements)
14 March 2011	£320	£80 1/4/11 & £400 3/5/11
6 May 2011	£305	£80 2/6/11, £80 1/7/11, £80 1/8/11 & £400 1/9/11
31 August 2011	£305	£80 x 7 3/10/11, 1/11/11, 1/12/11, 3/1/12, 1/2/12, 1/3/12, 2/4/12, £120 1/5/12, £107.50 1/6/12 & £287.50 29/6/12
10 September 2012	£285	£75 1/10/12, £115 1/11/12, £65 4/12/12, £65 2/1/13 & £325 4/2/13
11 February 2014	£245	£75.40 4/3/14, £50 2/5/14, £50 4/6/14, £20 2/10/2014 & £76.83 2/1/15. Mr Y has indicated that the outstanding balance was written off.

The adjudicator noted that Payday Express had said it had undertaken various checks before agreeing to lend to Mr Y. But she didn't know what the results of these checks were as Payday Express hadn't sent us its business file. And so she couldn't be sure whether the checks Payday Express did were enough.

So she looked to see whether - if Payday Express had done enough checks, it would've concluded that the loans were affordable (or not) for Mr Y. Having done so, she thought that none of the loans were affordable for Mr Y. So she asked Payday Express to refund the charges and interest Mr Y had paid on all the loans together with 8% simple interest. She also asked Payday Express to remove any adverse entries in Mr Y's credit file about the loans.

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

my findings

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

Payday Express was required to lend responsibly. It needed to make checks to see whether Mr Y could afford to pay back each loan before it lent to him. But the checks had to be proportionate to things like – but not limited to – the size of the loan, the total amount repayable and what Payday Express knew about Mr Y.

In its final response letter Payday Express says it carried various checks including external credit and identity checks and that Mr Y confirmed his personal details. But it hasn't provided us with any evidence to support this as it hasn't sent us its business file or responded to the adjudicator's assessment.

Clearly, performing checks in itself isn't enough – a lender also needs to react appropriately to what those checks show. This might necessitate further investigations or a decision to not lend at all. So by not showing me the results of the checks that were performed – I can't be sure that the checks Payday Express says it did, or its response to the results, were enough.

So I've gone on to consider what these checks might have shown, and whether these should've led Payday Express to decide the borrowing Mr Y was requesting was unaffordable.

So I have looked at Mr Y's bank statements from around the time he took the loans and a copy of his credit file which he has provided. I accept this information might not exactly replicate what Payday Express would've seen. But in the absence of anything else, this information represents the best indication I have of what Mr Y's financial circumstances were like at the time.

The first loan Mr Y took out was for £320 in March 2011. From his bank statements I can see Mr Y's monthly income was around £1,000 at this time. So, the loan repayment including the interest would've taken up a large chunk of Mr Y's income. Given the amounts involved and Mr Y's income, I think proportionate checks in this case would've involved asking Mr Y about his regular monthly commitments, short-term borrowing and living expenses.

And I can see from Mr Y's statements that his outgoings in the month leading up to taking this loan - which included payments to other creditors (including another short-term lender), were greater than his income. And I think Payday Express would've known at least some of this had it asked about Mr Y's full financial situation, as I think it should've done. And it wouldn't have lent to him in these circumstances.

The second loan Mr Y took on 6 May 2011 was for only slightly less than the first loan - £305. And Mr Y's income looks to have been roughly the same. So I'd have expected the same kind of affordability checks to be carried out. Only a couple of months had passed since Mr Y had taken the first loan and his statements indicate the first loan wasn't repaid until 3 May – only three days before Mr Y applied for the second loan. This suggests Mr Y hadn't repaid the first loan on time. From looking at his bank statements, his circumstances hadn't improved, and it looks like he'd taken more short term loans from other lenders in the month before. So, I think proportionate checks would've shown this loan to be unaffordable too.

Mr Y's circumstances didn't change much before the next loan in August 2011. This was now the third loan Mr Y had requested from Payday Express. And the repayment transactions on Mr Y's bank statements indicate he deferred payment of the second loan on a number of occasions - only repaying it in full when he asked for the third loan. So I think the checks Payday Express needed to do should've been more detailed, for example, by verifying Mr Y's financial circumstances by looking at his bank statements – as I have done.

Mr Y's statements show his salary was higher in July 2011 (but reduced to back to around £1,000 the following month). Although the amount he borrowed remained the same, I can see that Mr Y was still borrowing from other creditors and he was gambling heavily. Overall I've not seen enough to make me think the repayment amount on this loan was affordable. And again I think Payday would've known this had it done sufficient checks and it wouldn't have given him this loan.

It was a year later when Mr Y approached Payday Express for the fourth loan and around another 18 months before Mr Y applied for the fifth loan. I acknowledge that there was a gap in the lending. And these loans were slightly less than borrowed before - £285 & £245 respectively. But bearing in mind the proportion of Mr Y's income that had to go towards repaying these loans, I still think further checks were necessary. And again - because Payday Express hasn't provided us with its business file, I don't know what checks it did at these points either. So I've looked at Mr Y's circumstances at these times too. And I can't see that his circumstances had improved – he was borrowing from several payday lenders and gambling. And I think it's likely that even the most basic of checks would've shown that Mr Y couldn't afford these loans. So I don't think Payday Express should've lent Mr Y these loans either.

It follows therefore that I uphold Mr Y's complaint. And Payday Express needs to pay him some compensation.

putting things right

To put things right Express Finance (Bromley) limited should:

- refund the interest and charges applied to all five loans detailed above;
- 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 Y's credit file in relation to the loans.

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

I understand that Payday Express wrote off an outstanding balance on Mr Y's fifth loan. So Payday Express can offset this amount against any redress it needs to pay Mr Y.

my final decision

For the reasons above, I uphold Mr Y'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 Y to accept or reject my decision before 17 February 2017.

Sandra Greene
ombudsman