

complaint

Mr W is unhappy that Express Finance (Bromley) Limited trading as Payday Express gave him loans that were unaffordable.

background

During 2013 Mr W borrowed seven loans from Payday Express as follows:

Loan No	Date	Amount	Repaid
1	08.05.13	£460	24.05.13
2	24.05.13	£440	25.06.13
3	26.06.13	£400	25.07.13
4	25.07.13	£440	23.08.13
5	23.08.13	£400	25.09.13
6	25.09.13	£440	25.10.13
7	12.11.13	£120	25.11.13

Each of the loans was repaid on schedule. But Mr W complains that the loans were unaffordable to him and trapped him in a debt spiral whereby it was necessary for him to borrow again to repay each loan.

Payday Express is content that it carried out adequate checks to ensure that the loans were affordable.

Our adjudicator felt that the checks undertaken by Payday Express didn't go far enough and that it should've asked for more information to confirm affordability before lending to Mr W. He considered that, if it'd done so, Payday Express would've still provided loan 1 but would've seen that loans 2-7 inclusive weren't affordable. So he suggested that Payday Express should pay some compensation to Mr W.

As Payday Express hasn't provided any response to our adjudicator's opinion the complaint has been passed to me for a decision.

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've also taken into account the law, any relevant regulatory rules and good industry practice at the time the loans were offered.

There was no set list of checks that Payday Express was required to undertake before lending. But it needed to complete affordability checks that were proportionate. Deciding what checks would be proportionate might include considerations about the amount borrowed, the associated cost and risk to Mr W, and his borrowing history - including any indications that he might be experiencing (or had experienced) financial difficulty, and so on.

At the time of Mr W's borrowing Payday Express was regulated by the Office of Fair Trading ("OFT"). The OFT required businesses to lend responsibly, which means Payday Express needed to check that Mr W could afford to repay his loans sustainably. The guidance states that *"creditors should take reasonable steps to assess the borrower's likely ability to be able to meet repayments under the credit agreement in a sustainable manner"*. It also states that *"this is likely to involve more than solely assessing the likelihood of the borrower being able to repay the credit in question"*.

The guidance goes on say that repaying credit in a sustainable manner means being able to repay credit *"out of income and/or available savings"* and without *"undue difficulty."* And it defines *"undue difficulty"* as being able to repay credit *"while also meeting other debt repayments and normal/reasonable outgoings"* and *"without having to borrow further to meet these repayments"*

Even though Mr W managed to repay his loans in full that doesn't automatically mean the loans were affordable to him or that he managed to repay them in a sustainable manner. In other words I can't assume that because Mr W managed to repay his loans it means that he was able to do so out of his normal income without having to borrow further.

loan 1

I can see that, before providing loan 1, Payday Express asked Mr W for his personal details, including his net monthly income. It also carried out credit and identity checks through an external credit reference agency; however I haven't seen the results of these.

At the time Mr W applied for the first loan his monthly income was recorded as being £1,300. The required loan repayment was £593, which represented a high proportion of his monthly income. In light of this I'd have expected Payday Express to also ask Mr W for information about his normal monthly living costs, his regular financial commitments and details of any other short term loan commitments. I can't see that it did so and, as such, I don't think that its checks went far enough.

The question I must then consider is whether, had Payday Express carried out the better checks that I think were proportionate in the circumstances, it would've come to any different decision about the affordability of its proposed loan.

I've reviewed Mr W's bank statements from the time of loan 1 and, from these, I can see that he had normal living costs of £215, regular financial commitments of £235 and payments for other short term loans of £129. This total expenditure of £579 left him with monthly disposable income of £720. Against this I think that, even if it had done better checks, Payday Express would still have considered loan 1 to be affordable. It follows that I don't think it was wrong to provide this loan.

loan 2

Loan 2 was for a slightly lower value than the first loan, but was provided on the same day that loan 1 was repaid. At this time Payday Express recorded Mr W's net monthly income as £1,250. Here again, I'd have expected the lender to seek details of normal monthly living costs and other regular and short-term loan commitments to enable a reasonable assessment of affordability. But I can't see that it did so.

My review of Mr W's bank statements shows that, at this time, he had the same regular expenditure of around £450. However, he also had repayments in respect of other short term loans amounting to around £700 in the coming month. This total expenditure of £1,150 would've left him with disposable income of only £100, which is clearly insufficient to cover the repayment necessary for loan 2 of £567. As such I think that, had Payday Express done the better checks that I'd consider proportionate, it would've seen that this loan wasn't affordable.

loan 3

Loan 3 was, again, for a slightly lower amount but was once more provided almost immediately after the preceding loan was repaid. Given the relative value of the loans compared to Mr W's income, coupled with the pattern of borrowing that'd emerged by this time, I'd have expected Payday Express to question whether he might have become dependent on short term borrowings. As such, I'd have expected it to undertake a comprehensive review of Mr W's financial circumstances before providing any additional loans. There are a number of ways in which this could've been done, including asking for sight of his bank statements or other evidence of his expenditure such as copies of bills. I can't see that it did so.

I can see from Mr W's bank statements that, at the time of loan 3, his actual monthly income was £1,237 and regular monthly commitments remained fairly constant at £470. But, alongside this, he had repayments for other short term borrowings totalling over £850. In addition, I can see evidence of regular payments relating to online gambling.

In these circumstances I think that, had Payday Express undertaken the comprehensive checks that I consider to be proportionate it would've seen that loan 3 wasn't affordable.

loans 4 - 7

I've reviewed Mr W's bank statements at the time of each of the remaining loans 4 to 7. From these I can see that his financial circumstances didn't improve and, indeed, his monthly deficit was, on occasion, much greater by virtue of increased short term loans and gambling transactions. If Payday express had carried out better checks I think it would've seen that none of these loans were affordable.

In all of the above circumstances it follows that I don't think Payday Express was right to provide loans 2-7 inclusive to Mr W and so it must pay him some compensation.

my final decision

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

- refund all interest and charges Mr W paid on loans 2 to 7;
- pay interest on these refunds at 8% simple* per year from the dates of payment to the date of settlement;
- remove any adverse information about these loans from Mr W's credit file.

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 October 2018.

Richard France
ombudsman