

complaint

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

background

Mr H took five loans from Payday Express. The first was in December 2012, for £300 this was rolled over twice. The second loan, in March 2013, was for £200 less £15 deposit fee this was repaid in full it seems the same day or the next day with no interest or fees charged. Mr H took out his third loan on 27 March for £435 and this was rolled over twice before being repaid on 24 June. Mr H then took out his fifth loan on 2 September for £455 which was rolled over before it was repaid on the 30 September. Mr H took out his final loan for £615 on 3 October which was rolled over twice before it was repaid on 29 November 2013.

Mr H says he was struggling financially at the time, and was taking payday loans to repay other payday loans. He says that if Payday Express had carried out detailed enough checks, it would have been aware of the position he was in.

Our adjudicator recommended that the complaint should be upheld in part. She didn't think the checks Payday Express had carried out before making any of the loans had been proportionate. This was because Payday Express hadn't asked Mr H about his income until loan 2 and he had already rolled over the first loan. Also Payday Express hadn't asked about Mr H's outgoings until loans 4 and 5. She thought that if Payday Express had carried out proportionate checks, it would have realised that Mr H couldn't afford the loans with the exception of loan 4. So she recommended that it refund all interest and charges that Mr H paid on the loans, with the exception of loan 4.

Payday Express disagreed with the adjudicator's view, and provided evidence of further checks it had carried out which it said were proportionate. It said that it was entitled to rely on the information given by Mr H so the complaint has been passed 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 H could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr H was borrowing, the length of the agreements and his borrowing history. But there was no set list of checks Payday Express had to do.

Before lending Mr H the first loan Payday Express has provided evidence that it asked Mr H about his monthly income. It says it carried out a credit check but I can't see what information that revealed. Mr H declared that he had £1300 income. The repayment on this loan was £387. This was nearly a third of Mr H's total income. I would have expected Payday Express to have asked Mr H about his outgoings to see if he could afford to repay what he was borrowing. Mr H rolled over this loan twice before repaying it. I have looked at Mr H's bank statements and I can see that the loan was unaffordable. If Payday Express had asked about Mr H's circumstances it would've seen this.

For loan 2 Payday Express asked Mr H for details of his monthly income. He said he earned £1,300 per month but it didn't ask about his outgoings so I don't think it did enough to check that he'd be able to afford to repay the money before lending it to him. The situation was the same for loan 3. I don't think that the checks went far enough and if Payday Express had asked about income and outgoings it would've seen that the loans were unaffordable for Mr H.

Payday Express did ask about outgoings for loan 4 and I agree with the adjudicator that even if Payday Express had carried out more detailed checks before it agreed to loan 4 it would still have lent to Mr H because of the fact that he had two lots of income during that month and so he had enough money to repay the loan. So I don't think Payday Express did anything wrong by agreeing to this loan.

By the time of loan 5 I think that Payday Express should have asked for more detail beyond a credit check and regular income and outgoings. I say this because by the time of loan 5 Mr H was by now a regular borrower and his borrowing pattern suggested he may be reliant on short term credit. I think Payday Express should've asked Mr H about his short term lending. I'm satisfied, having looked at Mr H's bank statements, that after meeting his regular living expenses and financial commitments, he wouldn't have had enough money left to repay the loan. So I think the loan was unaffordable to him, and Payday Express shouldn't have made it.

I acknowledge that Payday Express says that it wasn't required, by the regulations in force at the time, to request Mr H's bank statements before making its lending decision or to carry out specific checks. I accept that. But I think it should have asked him for details of his income and regular monthly expenditure and financial commitments before making the first loan. And if it had done so, I think it likely that the information Mr H would have given it would have corresponded broadly with what's shown on his bank statements.

The case for checking more carefully that Mr H could afford to repay his borrowing was stronger still when he applied for the later loans given his borrowing pattern. If it had done so, it would have seen that he was only managing by taking loans from other short-term lenders. But at the very least, taking everything into account, I think that it should have asked him for details of his regular monthly expenditure for each loan. And again, I'm satisfied that if it had done so, it would have realised that Mr H couldn't afford any of the loans except for number 4. So it shouldn't have made these loans, or allowed Mr H to roll them over.

my final decision

My final decision is that I uphold Mr H's complaint. To put things right Express Finance (Bromley) Limited (trading as Payday Express) should:

- refund all interest and charges Mr H paid on all the loans that it made with the exception of loan 4;
- pay interest on those refunds at 8% simple* per year from the dates of payment to the date of settlement; and
- remove any adverse information about the refunded loans from Mr H'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 H 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 H to accept or reject my decision before 7 July 2017.

Emma Boothroyd
ombudsman