

complaint

Miss L complains that Instant Cash Loans Limited (trading as Payday Express) gave her loans she couldn't afford to repay. She asks that it refunds interest and charges, plus 8% interest, and removes the loans from her credit file.

background

Miss L took out seven loans between April 2015 and May 2016. She says she had loans from other payday lenders and was borrowing to repay debts. Miss L says if Payday Express had made appropriate checks it wouldn't have offered the loans.

The adjudicator recommended that the complaint should be upheld, saying:

- Miss L took out the first loan for £150 in April 2015. The loan was repayable in five instalments of about £50 per month. Miss L said her monthly income was £1,250 and her outgoings about £760. So the loan appeared affordable. Miss L had a default recorded some years before, but there was no information on her credit file that should have prompted Payday Express to do further checks. The second loan, for £150 repayable in two instalments, also appeared affordable based on information provided by Miss L.
- Miss L asked for a £500 loan a week after she'd repaid the second loan. While the monthly instalments of £163 appeared affordable based on information provided by Miss L, the increase in borrowing should have prompted further checks. An updated credit check would have shown a number of short term loans, suggesting she was reliant on them. Her credit file shows she'd agreed a debt management plan.
- Miss L's bank statements show payments to a number of payday lenders and gambling businesses. She was consistently overdrawn. Had Payday Express carried out proper checks it would have seen that the third and later loans weren't affordable.

The adjudicator recommended that Payday Express refunds interest and charges from the loan taken out in July 2015 and later loans, plus 8% interest, and removes adverse information about these loans from Miss L's credit file.

Payday Express didn't agree. It said the checks it carried out were proportionate. It wasn't required to do a credit check before each loan. It was entitled to rely on information from Miss C and this showed the loans were affordable. It said not all loans would appear on a credit search and gambling payments were not essential expenditure. Miss L repaid the loans on time or early and didn't say she was in financial difficulty.

my findings

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

Lenders have to assess whether a loan is affordable using suitable information. Payday Express says it's not required to look at bank statements or update credit checks before each loan. But its checks must be proportionate depending, for instance, on the size of the loan, the repayments and what the lender knows about the customer.

The first and second loans taken out by Miss L were for £150 repayable in instalments. Miss L told Payday Express her monthly income was £1,250 and her expenses were £760 before the first loan and £1,000 before the second loan. Payday Express did a credit search before the first loan. I think given the amount of the loans and Miss L's income the checks were proportionate. I don't think Payday Express had any reason to suspect the loans weren't affordable.

Miss L applied for a £500 loan in July 2015, shortly after repaying the second loan. I think, given the amount of the loan and Miss C's stated income, Payday Express should have done further checks. I think it should have updated its credit check.

Payday Express didn't do a credit check in July 2015. So I can't be certain what a credit check would have shown. I think it's likely it would have shown Miss L had taken out a number of short term loans. It's likely it would also have shown she'd entered into a debt management plan for her defaulted credit card account.

Payday Express is generally entitled to rely on information provided by a customer. But I think it should have questioned the information provided by Miss L. She recorded her monthly expenditure as £1,000 in May 2015 and then £750 in July 2015. I think it's unlikely the information she provided was consistent with the information a credit check would have shown about her borrowing. In July 2015 Miss L said her monthly credit expenditure was £200. But her bank statements show payments of more than £1,000 to short term and instalment lenders in July 2015.

Miss L made a large number of payments to gambling businesses. Her account was overdrawn. Her pattern of borrowing and spending continued during the period she took out loans with Payday Express. I don't think this borrowing was affordable or sustainable and Payday Express would have known this if it had carried out proper checks.

I think it's fair and reasonable that Payday Express refunds any interest and charges applied to the loan taken out in July 2015 and all later loans, with interest at 8% simple per year. It should deduct the refund from any capital outstanding and pay Miss L any balance.

If an unpaid balance remains after the refund, Miss L should repay this as she's had use of the money. If her financial circumstances make this difficult, she should contact Payday Express about agreeing a suitable repayment plan. Payday Express should remove any adverse information about these loans from Miss L's credit file.

my final decision

My decision is that I uphold this complaint. I order Instant Cash Loans Limited to:

- refund all interest and charges applied to the loan taken out in July 2015 and all later loans plus pay interest at 8% simple per year from the date each sum was paid until the date of settlement. This should be offset against any outstanding capital sum; and
- remove any adverse information about the loan taken out in July 2015 and all later loans from Miss L's credit files.

Instant Cash Loans Limited must pay the compensation within 28 days of the date on which we tell it Miss L accepts my final decision.

If Instant Cash Loans Limited considers that it's required by HM Revenue & Customs to withhold income tax from the 8% interest, it should tell Miss L how much it's taken off. It should also give her a tax deduction certificate if she asks for one, so she can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss L to accept or reject my decision before 27 February 2017.

Ruth Stevenson
ombudsman