

## **complaint**

Mr T complains about a loan he took out with Instant Cash Loans Limited, trading as Payday Express, ("ICL"). He said that ICL shouldn't have given him the loan as it was unaffordable.

## **background**

Mr T took out a loan for £1,250 with ICL on 13 May 2016. The loan was repayable by twelve monthly instalments of £196.77. Mr T hasn't repaid the loan. He said that the loan had been lent irresponsibly.

ICL said that it had made a credit check and asked Mr T for details of his income and regular expenditure. ICL said that the loan repayments appeared to be affordable based on the information Mr T had declared to it. It said that there didn't appear to be any particular issues with other lenders that concerned it.

The adjudicator didn't recommend that the complaint should be upheld. He noted that ICL had carried out a credit check which he hadn't seen and that it had asked Mr T for his income and regular expenditure. He said that ICL's checks were proportionate, and that based on Mr T's declared disposable income, the loan was reasonably lent.

Mr T disagreed. He responded to say that his income hadn't been checked at any point. He noted that the adjudicator had said in his assessment that ICL had checked this. Mr T also said that he hadn't been asked by ICL to send it any bank statements. If ICL had seen these, it would have seen that there were a lot of other payday loans and other loans. It would have also seen that he was gambling a lot at this time. His credit report would also have shown he had a significant amount of lenders and debt at the time.

Mr T also noted that the adjudicator had said that he had £725 disposable income at this time. He said that his statements confirmed that this was untrue. He was financially struggling at this point and was borrowing to pay off other debts that were spiralling out of control.

## **my findings**

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

ICL is required to lend responsibly. It needed to make checks to see whether Mr T 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 T was borrowing, and his lending history, but there was no set list of checks ICL had to do.

I've thought about whether ICL's checks were proportionate for this loan. ICL told us that before lending to Mr T, it had asked about his income and expenditure. And it had carried out a credit check before the loan. I haven't seen ICL's credit check.

I note that Mr T said that he had other credit accounts and I've seen these on his own credit report. Mr T had declared monthly credit commitments of £400 to ICL but I can see from Mr T's credit report that his credit commitments were somewhat higher than this. But I think it's also important to note that the information a consumer might see, when they request a copy of their credit file, might be very different to that seen by a lender. ICL hasn't been able

to provide us with any information about its credit check. But I'm aware that when a lender carries out a credit search, the information it sees doesn't usually provide the same level of detail that a consumer's credit report will and it isn't necessarily up to date. A lender might only see a small portion of a borrower's credit file, or some data might be missing or anonymised. I'm also aware that not all payday and short term lenders report to the same credit reference agencies. So, Mr T may have taken other payday or short term loans prior to the loan which may not have been identified by ICL's credit check. So, this may explain any differences between the information provided by ICL's credit check and Mr T's actual situation.

I note that Mr T had to repay a monthly amount of £196.77 for twelve months to repay the loan. But even though the amounts that Mr T needed to repay each month were smaller than if he'd taken a normal payday loan, he was committing to making those repayments over a far longer period. So I think it would have been proportionate here for ICL to gather information about Mr T's income and regular outgoings, which I can see that it did.

ICL's records show that Mr T declared an income of £2,200 to ICL and his declared regular expenditure totalled £1,475 including credit commitments of £400. The expenditure information requested by ICL included housing, utilities, food, other credit commitments and other expenditure. ICL also took into account statistical expenditure data, which increased Mr T's outgoings to £1,510.79. So it calculated that Mr T had a disposable income of £689.21.

I don't think at that stage of its relationship with Mr T that ICL had any reason to doubt the information he'd provided to it. I think it was reasonable for ICL to rely on the information Mr T provided at this stage about his financial situation and to add an additional amount based on statistical data. The information Mr T provided together with the additional outgoings amount suggested that he was able to afford to repay the loan sustainably. And there was little to suggest to ICL at this stage that Mr T wasn't using the loan in the way it was intended – as a short term solution to a temporary cash flow problem.

I appreciate that Mr T now says that he wasn't asked to provide his bank statements to ICL and that his income hadn't been checked. But this would have been disproportionate here. At this stage of the lending I wouldn't have expected ICL to ask for Mr T's bank statements or his payslips to independently verify the financial information that he gave. I think ICL was entitled to rely on what Mr T had said about his income and expenditure.

I also note that Mr T has referred to his other credit commitments. But, the information he provided to ICL took into account his credit commitments. His declared financial information suggested he could comfortably repay the loan and didn't suggest he was experiencing difficulty.

I also note that Mr T said that he had a gambling problem. But that wasn't something he told ICL about or something that ICL would have discovered from what I consider to be proportionate checks.

I appreciate that Mr T will be disappointed with my decision. But, I don't think that ICL treated Mr T unfairly in giving him the loan. And based on the information ICL had about Mr T, it appeared that he could afford the repayments. So, I don't think ICL was wrong to give Mr T this loan.

I understand that Mr T hasn't repaid the loan. If he currently has financial issues, I would remind ICL of its responsibility to treat him in a positive and sympathetic manner about the amounts he should repay.

**my final decision**

My decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 15 March 2019.

Roslyn Rawson  
**ombudsman**