

complaint

Mr P complains about payday loans he had with Express Finance (Bromley) Limited (trading as Payday Express) which he says shouldn't have been given to him because he couldn't afford the repayments.

background

In my provisional decision I set out why I was minded to partly uphold the complaint. I invited both parties to let me have any further comments and evidence. Payday Express accepted my provisional decision and Mr P didn't have anything further to add. I've included the backgrounds to Mr P's complaint below.

A summary of Mr P's borrowing history is as follows;

loan number	loan amount	received date	actual repayment date
1	£160.00	11/03/2011	18/03/2011
2	£280.00	01/04/2011	19/04/2011
3	£200.00	01/09/2011	07/09/2011
4	£280.00	24/01/2012	20/02/2012
	£80.00	04/02/2012	
5	£300.00	10/04/2012	23/04/2012
6	£250.00	03/05/2012	15/05/2012
7	£200.00	01/06/2012	20/07/2012
	£300.00	20/06/2012	
8	£250.00	25/07/2012	10/08/2012
9	£400.00	21/08/2012	19/10/2012
10	£400.00	22/10/2012	23/10/2012

An adjudicator looked at Mr P's complaint and felt the checks carried out on the first five loans went far enough considering the amount being borrowed. But Mr P had extended his fifth loan so the adjudicator felt for the remaining borrowing Payday Express should've carried out further checks. The adjudicator looked at Mr P's bank statements and could see that he didn't have enough disposable income to afford to repay loans six to ten so she recommended Payday Express refund the interest and charges on these loans.

Mr P did have further borrowing in 2016 but he has withdrawn his complaint about that loan, so I'm only considering the loans mentioned above.

my findings

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

Both Payday Express and Mr P have accepted the findings I made in my provisional decision. So I see no reason to depart from what I've previously concluded.

Payday Express had to gather enough information to be able to make an informed decision as to whether it was going to lend. The guidance and rules didn't set out what checks must be done before lending was approved. However, Payday Express needed to conduct enough checks to make sure the loan was affordable. And these needed to be proportionate to a number of things such as the size of the loan and when the loan was due to be repaid.

But even if the checks Payday Express carried out weren't proportionate, that alone doesn't mean Mr P's complaint should be upheld. I say this because, it's possible, had further checks been carried out by Payday Express they would've shown Mr P was able to afford his loans. So Payday Express wouldn't have been wrong to lend him the money.

Payday Express says that for each lending decision it used Mr P's declared income, details he gave it about his employment and then it used its own commercial judgement to decide whether to lend. Payday Express also says that it carried out a credit check with a credit reference agency before the first loan was approved.

Payday Express says that based on the information it gathered about Mr P, it was reasonable to lend to him. But I've thought about what Payday Express says and Mr P's circumstances at the time each loan was approved. And having done so, I don't think the checks Payday Express carried out were proportionate for some of the borrowing.

Loan 1

Overall, I think the checks carried out on this loan went far enough. Payday Express says that it carried out a credit check and took details of Mr P's income. And I think these checks went far enough considering the amount Mr P was borrowing compared to his declared income (which Payday Express could rely on). This was Mr P's first loan and there also wasn't anything that Payday Express saw in the checks that it carried out to make it think that it needed to ask some further questions. Payday Express could see the loan was affordable so it wasn't wrong of it to lend to Mr P.

Loans 2 and 3

For the next two loans, the checks carried out by Payday Express didn't go far enough. Mr P's borrowings had increased and while he hadn't had any problems repaying his first loan I still think that Payday Express should've asked some further questions about Mr P's finances such as what he was spending on his regular living costs and regular financial commitments.

Payday Express could've asked Mr P about his regular outgoings, but as it didn't, I've considered what Mr P has told us about his outgoings as well as reviewing what his bank statements show. In order to understand what these may have been at the time.

Having looked at his bank statements at the time, I don't think Mr P was in a position to be able to afford these loans. While Mr P did have some disposable income after his outgoings, he didn't have enough to be able to afford his loan repayments. And this is something that Payday Express would've been aware of by carrying out what I'd consider to be proportionate checks and had it been aware of Mr P's circumstances it wouldn't have lent to him.

I appreciate there is around a five month gap between loans two and three but I don't think that would've been long enough to make Payday Express think that Mr P's finances had returned to a more secure footing.

Loan 4

Mr P didn't borrow from Payday Express for around four months, but I still think this isn't long enough to make Payday Express think that Mr P could be treated as a new customer – so I've considered this loan as part of the same chain of borrowing.

Mr P had increased the amount he had borrowed compared to his previous loan and given the number of loans he'd taken I think Payday Express would've wanted some further information about Mr P's financial circumstances. So in addition to wanting to know about Mr P's regular living costs and his regular financial commitments, Payday Express should've asked some further questions about any other short term lending Mr P may have had at the time.

I've again looked at his bank statement from the time this loan was approved, and I can see that Mr P owed other short term creditors around £1,000. So he didn't have any disposable income to cover his regular living costs as well as afford his repayment to Payday Express. And I think it's likely Payday Express would've known this had it carried out sufficient checks and it wouldn't have lent to him.

Loan 5 – 10

It's reasonable to say that by this point Mr P was becoming a regular borrower so I think Payday Express's checks should've gone further than just asking him about his income. By now, Payday Express should've had a full understanding of Mr B's financial situation, which it could've done a number of ways, such as asking for proof of his outgoings or as I've done here, reviewed his bank statements. So, I don't think the checks carried out by Payday Express went far enough for any of these loans.

Having reviewed his bank statements I can see a deterioration in Mr P's financial circumstances. Throughout this period, he is continuing to borrow from a number of other short term lenders and at times is also spending significant amounts of money each month gambling. I can also see from the statements that Mr P's regular living costs and regular financial commitments remain broadly similar throughout this time. But with his gambling and his repayments to other short term lenders he didn't have any disposable income in order to afford his loan repayments. So had Payday Express carried out proportionate checks it would've most likely been aware of Mr P's financial situation and it wouldn't have lent to him.

what Payday Express should do to put things right

To put things right for Mr P, Payday Express should:

- refund all the interest and charges applied to loans loan 2 to 10.
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement †;
- remove any adverse information recorded on Mr P's credit file because of these loans

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

my final decision

For the reasons I've explained, I partly uphold Mr P's complaint.

Express Finance (Bromley) Limited should put things right by doing what I've said above.

Under the rules of the Financial Ombudsman Service, I am required to ask Mr P to accept or reject my decision before 21 August 2017.

Robert Walker
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