

complaint

Ms L complains that Express Finance (Bromley) Limited (trading as Payday Express) gave her unaffordable payday loans. She wants a refund of the interest and charges she paid with interest.

background

Ms L had four payday loans from Payday Express between August and November 2011 and a further three between November 2012 and February 2013. She didn't repay the last one.

our adjudicator's view

Our adjudicator recommended that the complaint should be upheld. Ms L was borrowing from other short-term lenders and her borrowing was frequent. Payday Express didn't send us its business file, so he couldn't see what checks it had made that Ms L could afford her loans. He thought Payday Express should refund all the interest and charges Ms L paid, with interest, and remove any adverse entries from her credit file.

Payday Express then replied that it had carried out appropriate checks on affordability as required at the time. It also sent its business file for us to consider.

my provisional decision

After considering all the evidence, I issued a provisional decision on this complaint to Ms L and to Payday Express on 13 April 2017. I summarise my findings:

Ms L first borrowed £120 (£150 with interest) which she repaid two weeks later. Her second loan for £120 was taken out five days later and she topped this up to £350 with interest the following week. A week after repaying this, Ms L borrowed £320 (£400 with interest) which she then repaid. Her fourth loan for £400 including interest was taken on the same day and repaid a month later.

There was then a year's gap in her borrowing. Then she borrowed £125, which she repaid on time. Then three weeks later, her sixth loan was for £500 with interest, which she repaid. Four days later, Ms L took out her last loan for £250 which she topped up with £195 leaving her to repay £575. Ms L defaulted on this loan.

Payday Express was required to lend responsibly. It should have made checks to make sure Ms L could afford to repay the loans before it lent to her. Those checks needed to be proportionate to things such as the amount Ms L was borrowing, and her lending history. But there was no set list of checks Payday Express had to do.

Payday Express said it carried out a credit check on Ms L prior to her first loan. But it was unable to show us what this found. It said Ms L told it her income was £1,340 rising to £1,600 for her second period of borrowing. But its file shows that it didn't ask her for this information until her fourth loan. It didn't ask for her outgoings.

Payday Express said Ms L's loans were small in comparison to her income. It said it had already refunded one default charge caused by a system error. When Ms L entered an Individual Voluntary Arrangement (IVA), it wrote off her outstanding debt of £756.20.

Ms L's first loan was small. I thought a check on her income would have been a proportionate and sufficient check that she could afford to repay it. But I couldn't see that Payday Express asked Ms L for her income until her fourth loan. So I couldn't see how it knew she could afford to repay her first loan.

The adjudicator thought this was irresponsible lending. But I didn't agree. Looking at what Payday Express would have seen if it had made this check, I thought the loan was small compared to Ms L's income and so it was affordable. So I couldn't say this was irresponsible lending.

Ms L borrowed again shortly afterwards and topped up her loan to a much larger amount. I thought Payday Express should then have checked her income, her living expenses and regular commitments to ensure that she could afford her repayments. But I couldn't see that it checked any of these.

Ms L provided her bank statements from the time. I looked at these to see what Payday Express would have found if it had made sufficient affordability checks at the time she asked for the top-up. I could see that Ms L was borrowing from a range of lenders to meet her living costs and pay her commitments. She didn't have enough disposable income to repay Payday Express without taking out further loans.

So I thought that if Payday Express had made proportionate and sufficient checks on Ms L's top-up for her second loan, it would have seen she couldn't afford her repayments. So it should have declined to lend this and her next two loans. I couldn't say that they were lent responsibly.

After Ms L's fourth loan, there was a gap of a year in her borrowing from Payday Express. So I thought it could reasonably have thought she may have resolved any earlier financial problems. She then borrowed £125. Her stated income was £1,300. So I thought this was a proportionate and sufficient check that Ms L could afford her repayments. This was another point where I differed from the adjudicator's opinion.

But Ms L topped up her next loan to £500, and stated her that income had increased by £300 in four days to £1,600. I thought Payday Express should then have been alerted to make further checks. I thought it should have checked her living costs, her regular commitments and any other short-term borrowing. But I couldn't see that it made any further checks.

Again I looked at Ms L's bank statements from the time to see what these further checks would have shown. Ms L was still borrowing from several other lenders. She still didn't have sufficient disposable income to repay her loans without further borrowing. So I thought that if Payday Express had made these checks on Ms L's finances, it would have seen, as I did, that she couldn't afford its loans. So I thought Payday Express' lending for Ms L's last two loans was irresponsible.

Payday Express waived the outstanding balance of Ms L's last loan when she entered IVA. But I didn't think this went far enough.

Subject to any further representations by Ms L or Payday Express, my provisional decision was that I intended to uphold this complaint in part.

my findings

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

Neither Payday Express nor Ms L made any further representations, so I can see no reason to change my provisional decision.

my final decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms L to accept or reject my decision before 19 June 2017.

My final decision is that I uphold this complaint in part. I require Express Finance (Bromley) Limited (trading as Payday Express) to do the following:

1. Refund Ms L the interest and charges she paid on her loans between 30 August 2011 and November 2011, and from January 2013 onwards, adding interest at 8% simple per annum from the date of payment to the date of settlement.
2. HM Revenue & Customs requires Payday Express to withhold income tax from that interest. It must give Ms L a certificate showing how much it's taken off if she asks for one.
3. The refund should be paid to Ms L's insolvency practitioner unless it has completed termination of Ms L's account.
4. Remove any adverse information relating to these loans from Ms L's credit file.

Phillip Berechree
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