

complaint

Mr T has complained about several loans granted to him by Express Finance (Bromley) Limited trading as Payday Express ("Payday Express"). He's said Payday Express allowed him to take out loans he couldn't afford which contributed to him falling into a debt spiral.

background

I issued my provisional decision in October 2017, a copy of which is attached and forms part of this final decision. In my provisional decision I explained why I was intending to partially uphold Mr T's complaint. I asked everyone to send me any further comments and information before I reached a final decision.

Both Mr T and Payday Express responded to say they'd received my provisional decision and accepted my findings.

my findings

I've re-considered all the evidence and arguments already sent to us to decide what's fair and reasonable. And in the absence of any new arguments, I've reached the same conclusions I reached in my provisional decision, for the same reasons.

what Payday Express should do to put things right

Payday Express should:

- refund all interest and charges Mr T paid towards loan 3 from the second top-up onwards (including any late fees and default interest).
- refund all interest and charges Mr T paid towards loan 4 (including any late fees and default interest).
- pay interest on this refund at 8% simple* per year from the dates of payment to the dates of settlement.
- remove any adverse information about these loans from Mr T's credit file.

*HM Revenue & Customs requires Payday Express to take off tax from this interest. Payday Express must give Mr T a certificate showing how much tax it's taken off if he asks for one.

If Mr T still owes Payday Express any of the principal balance he borrowed on his final loan, Payday Express may deduct this from the compensation that is due to him. To be clear, that outstanding balance should be recalculated to remove any interest and charges, but taking account of any repayments Mr T has made on that loan as though they were applied against the principal sum borrowed. And if Payday Express no longer owns this debt, it needs to buy it back. If it doesn't then it isn't entitled to make any deductions for it from the amount it needs to pay Mr T.

my final decision

For the reasons I've explained above and in my provisional decision I uphold Mr T's complaint in part. 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 T to accept or reject my decision before 27 November 2017.

Adam Golding
ombudsman

extract of provisional decision

background

Payday Express says it agreed four loans for Mr T during the period December 2012 to March 2013. On some of the loans he also took top-ups. This is where he added additional funds to an existing loan. The following summarises some of the information Payday Express provided about these loans:

loan number	amount borrowed	date borrowed	date repaid in full
1	£150.00	07/12/2012	14/12/2012
2	£150.00	18/12/2012	15/01/2013
3	£200.00	17/01/2013	15/03/2013
top-up	£100.00	25/01/2013	
top-up	£190.00	26/02/2013	
4	£250.00	20/03/2013	N/A
top-up	£240.00	21/03/2013	

Our adjudicator thought the checks Payday Express carried out before approving loan 1 were proportionate. But she didn't think the checks carried out before approving loans 2 to 4 were. She said that if Payday Express had carried out proportionate checks, it would've discovered that loan 2 was affordable for Mr T, but that none of the other loans or top-ups were. So she recommended that Payday Express should refund all interest and charges applied to loans 3 and 4 to put things right.

Payday Express disagreed with our adjudicator. It says it ran a credit check on Mr T which showed he had a good credit rating with a low level of indebtedness, and no insolvencies or defaults. It says the fact that Mr T chose to top-up or defer some of his repayments doesn't necessarily indicate that he was in financial difficulty. But it accepted that due to the increase in Mr T's borrowing that it should've carried out further affordability checks before approving loan 4. So it offered to refund the interest and charges associated with that loan, and remove any adverse information about that loan from Mr T's credit file.

Mr T didn't want to accept Payday Express' offer. So because no agreement has been reached the complaint has been passed to me.

my provisional findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. I have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Payday Express was required to lend responsibly, which means it needed to check that Mr T could afford to repay his loans sustainably. Affordability checks needed to be proportionate, and might include considerations about the amount borrowed, the associated cost and risk to Mr T, his borrowing history including any indications that he might be experiencing (or had experienced) financial difficulty, and so on.

At the time Mr T took out his loans Payday Express was regulated by the Office of Fair Trading (OFT). The OFT guidance specifically states *"assessing affordability' is a borrower-focussed test which involves a creditor assessing a borrower's ability to undertake a specific credit commitment, or specific additional credit commitment, in a sustainable manner, without the borrower incurring (further) financial difficulties."* The guidance goes on say that repaying credit in a sustainable manner means being able to repay credit *"out of income and/or available savings."*

It then goes on to say *“the purpose of payday loans is to act as a short-term solution to temporary cash flow problems experienced by consumers. They are not appropriate for supporting sustained borrowing over longer periods, for which other products are likely to be more suitable.”* And finally it says that *“the creditor should take a view on what is appropriate in any particular circumstance dependent on, for example, the type and amount of the credit being sought and the potential risks to the borrower.”*

Payday Express says it asked Mr T for details of his income and completed a credit check before it approved loan 1. It hasn't provided the results of the credit check, but I've seen a record that it was completed. Mr T has also provided a copy of his credit report himself, although from a different credit reference agency to the one used by Payday Express. So I've taken that into account when deciding what information I think Payday Express would've likely seen on the credit check it completed.

From what I've seen of Mr T's credit report, I don't think it's likely that Payday Express would've seen anything there, before it approved loan 1, which would've caused concern about Mr T's ability to afford the loan. So I don't think it should've been promoted to carry out more detailed checks than it did.

As this was Mr T's first loan with Payday Express, I think it was reasonable for it to rely on the figure he gave for his income (£1,350) without needing to verify it. And based on Mr T's stated income, compared to the amount he needed to repay for this loan (around £195), I think the affordability checks Payday Express completed were proportionate. So I don't think it was wrong to approve this loan.

Mr T took out loan 2 four days after he repaid loan 1. He borrowed the same amount (£150) which meant the amount he needed to repay was the same too (around £195). Payday Express' records indicate that it didn't complete any new affordability checks at this stage, but instead relied on the income he provided and the credit check results it completed for loan 1.

Given that the checks Payday Express completed for loan 1 were carried out in the same month that Mr T applied for loan 2, I don't think it was unreasonable for Payday Express to rely on the same information. This was only Mr T's second loan, and he'd repaid loan 1 on time with no apparent issues, so I still think Payday Express could rely on the figure Mr T gave for his income. And based on that I think the loan would've appeared affordable. So I don't think there was any need for Payday Express to complete more detailed checks before it approved loan 2.

Mr T took out loan 3 two days after he repaid loan 2. This loan was for a higher amount (£200) which meant the amount he needed to repay was higher too (around £260). This was now Mr T's third loan in quick succession, and he was requesting borrowing so soon after repaying each loan. So I think Payday Express should've been concerned that he might be becoming dependent on the loans it was providing.

Based on this, I think it would've been proportionate for Payday Express to ask Mr T about all of his regular outgoings, including any other short term credit he might've had outstanding, in addition to the checks it completed. I've had a look at Mr T's bank statements to get an understanding of what these were, and what I think he would've declared if Payday Express would've asked.

From what I've seen of Mr T's circumstances at the time he took out loan 3, he was regularly spending around £300 per month on accommodation, £180 per month for a finance agreement and around £15 per month on fuel. He's also told us he contributed around £100 per month towards household bills, which seems reasonable given his circumstances.

I can also see that in the months leading up to loan 3 Mr T was borrowing from other short term lenders. But it doesn't appear that he had anything outstanding in January or February 2013, aside from the loans he was taking from Payday Express. And taking that into account, if Payday Express had carried out proportionate checks I think it would've concluded that he had enough disposable income (around £700) to afford the repayment on this loan. So I don't think it was wrong to approve loan 3.

Around a week after he took out loan 3 Mr T topped-up his loan by £100. This took the amount he needed to repay up to around £400. As Mr T was increasing the amount he needed to repay, I think it would've been proportionate for Payday Express to continue to ask Mr T about his income, regular outgoings and other short term lending commitments, before it agreed to additional lending. But for the same reasons as the initial borrowing on loan 3, if Payday Express had carried out proportionate checks, I think it would've concluded that the first top-up was affordable too.

Mr T took a second top-up on loan 3 in February 2013. This one was for £190 and took the amount he needed to repay to around £630. Considering his borrowing history, and the increased amount Mr T would need to repay, I think Payday Express should've completed even more detailed checks before it agreed this top-up. At this stage I think it would've been proportionate for it to build a full picture of Mr T's finances before it agreed to lend again. There are many ways it could've done this, such as by asking for payslips and/or bank statements to verify the information Mr T was providing.

I've had a look at Mr T's bank statements from around the time of this top-up. From what I've seen, his actual income was slightly lower than he declared (around £1,100 per month), and his regular expenses were still around the same as when he took the initial borrowing on loan 3. But in addition to those expenses, Mr T would regularly spend around £100 per month with various gambling companies. And Mr T has also explained that he would regularly make large amounts of cash withdrawals to fund his gambling.

If Payday Express had carried out proportionate checks and built a full picture of Mr T's financial circumstances, I think it would've discovered Mr T's accurate income, and his regular gambling expenses. And taking those into account, I think it would've had real concerns about his ability to repay the increased loan in a sustainable way. So as a responsible lender, I don't think it would've approved the second top-up on loan 3.

Mr T took out loan 4 in March 2013 around 5 days after he repaid loan 3. He borrowed £250 which meant he needed to repay around £330. As this was now his fourth loan, and because he'd taken two top-ups on loan 3, I think it would've been proportionate for Payday Express to continue building a full picture of his financial situation before it agreed to lend again.

Mr T's income and regular expenses were still broadly the same as when he took out loan 3. At this stage he'd also started borrowing from other short term lenders again (he had around £180 outstanding in March 2013). And he continued to withdraw large sums and spend large amounts on gambling (around £600 combined in the month before he took out this loan).

So again, if Payday Express had carried out proportionate checks and built a full picture of Mr T's financial circumstances, I think it would've discovered this. And as a responsible lender I don't think it would've approved loan 4 or the top-up of £240 that Mr T took on loan 4 the day after he took out the initial loan.

It follows that I think Mr T has lost out because of what Payday Express did wrong in respect of the second top-up on loan 3 and the initial borrowing and top-up on loan 4.