

## **complaint**

Miss F complains that Express Finance (Bromley) Limited trading as Payday Express ("Payday Express") gave her unaffordable loans. She wants a refund of all interest and fees paid, plus interest, the loans removed from her credit records, and any money due from her written off.

## **background**

In my provisional decision, I set out why I intended to uphold the complaint. Miss F didn't have any further comments to make. Payday Express disagreed with my view and sent further evidence.

Miss F took out a revolving credit facility which ran from 2010 until 2014, and then 16 payday loans between 2014 and 2016. The revolving credit facility had limits ranging between £280 and £500. The payday loans ranged between £100 and £1000, and were topped up from time to time or rolled over repeatedly. She said it should've been obvious to Payday Express that she was in financial difficulties as she was borrowing money as soon as she repaid earlier loans in order to pay her bills.

Miss F complained to Payday Express. It wasn't able to give a final response within eight weeks so she complained to us. The adjudicator's view was that Miss F took out 23 payday loans with Payday Express and there was a clear pattern of dependency on short term credit. The adjudicator thought she was taking out loans as soon as she was paying them and on occasions took too long to repay. She didn't think the loans from 29 July 2013 were affordable, and the interest and fees paid for those loans should be refunded, together with interest. The adjudicator also thought the loans should be removed from Miss F's credit records.

## **my findings**

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. In my provisional decision I said:

"When lending money to a consumer, lenders are required to ensure the consumer can repay the borrowing in a sustainable manner without it adversely impacting on their financial situation. A lender should obtain sufficient information to make an informed decision about the lending. Exactly what the lender should consider is for each lender to decide and the guidance and rules lists a number of things each lender may wish to consider. Any checks should be proportionate, based on the size of the borrowing.

I asked for more information from Payday Express as I suspected from the evidence before me there was in fact a revolving credit agreement in place. It confirmed that I was correct, and gave details of the limits Miss F could borrow. A revolving credit agreement, often known as a running credit facility, is a high cost loan allowing repayments over a longer period than a payday loan. Consumers can borrow up to a limit when they want while the agreement is in place.

As it's clear the adjudicator made a mistake in thinking that there were 23 payday loans, when in fact there was a revolving credit agreement in place, I can't agree with either her view or her comments about the pattern of borrowing. As Miss F was able to borrow up to the limit when she wanted, and only pay interest on what she'd borrowed, borrowing from the account within days of previously borrowing isn't necessarily a sign of financial difficulties.

In Miss F's case, the limit originally in place for the revolving credit facility was £500, a significant sum. The limit was reduced gradually over time to £280, but was then increased up to £490 by July 2013. Regardless of what was actually borrowed, I must look at whether proportionate checks were carried out by Payday Express in relation to the amount which Miss F could've borrowed.

When it sent the further evidence I required, Payday Express said that it didn't have to check with every credit reference agency, and it wasn't responsible that each one might hold different information about Miss F. It also explained that it couldn't show the results of the credit checks due to a change of computer systems. It also offered to remove some of the loans from Miss F's credit records and refund some of the interest (£1,826.41 including statutory interest). Payday Express felt Miss F had been allowed to extend the loans too many times as it had agreed in November 2012 to cap the number of roll overs to three. It also thought some of the loans were unaffordable. Miss F rejected the offer.

Looking at the limits up to which Miss F was able to borrow under the revolving credit agreement, I can't say that the checks carried out were proportionate in 2010 as there's no evidence of checks carried out before 2012. It checked Miss F's identity in November 2012. I think it's more likely than not some checks were carried out before Miss F was able to borrow money, and I appreciate that the evidence isn't available due to a change of computer systems, as opposed to never having been carried out at all.

Compared to Miss F's income, the initial limit in place was large, and I would expect several checks to have been carried out by Payday Express. I note the limit dropped over time, but even £280 is a significant sum. The evidence sent from 2012 onwards in my view isn't enough for me to find proportionate checks have been carried out either.

I considered separately the payday loans. Again, I wasn't satisfied that proportionate checks have been carried out for any of the loans. Payday Express haven't sent me evidence or the results of the checks it says it carried out. It has sent details of Miss F's income and spending from July 2013 onwards, but little other evidence. It says it carried out two credit checks in 2014, but the results are unknown and I would've expected many more credit checks than this given the history of the borrowing. It was Payday Express' choice to only use one credit reference agency, but given the size of some of the loans, I'm not persuaded that was proportionate.

In light of the above findings, I moved on to consider whether any of the loans were affordable and what would've Payday Express seen if it had carried out proportionate checks.

I've had the benefit of looking at Miss F's bank statements. From 2010 until now, she clearly has been struggling financially and spending more than she earned. Her income from 2010 until April 2013 ranged between £760 and £900 net per month, not the higher amount stated by Payday Express. From April 2013 to now, her monthly income increased to an average of £1700 net each month. But almost every month, Miss F used an unauthorised overdraft to live, bounced several direct debits each month and was being sent letters by her bank asking if she was in financial difficulties due to her debts. And I can see she was borrowing substantial sums at the same time from several other payday lenders, which I believe would've have shown on her credit records at the time. Miss F at times was borrowing money to repay the loans.

There was one exception to the above pattern, which was the £1000 borrowed from Payday Express in May 2015. That in my view could've been affordable, except for the large sums spent by Miss F gambling. I can see throughout she gambled smaller sums, but in May 2015 I think it would be fair to say Miss F had a gambling problem as she gambled thousands. Previously, she'd withdrawn large sums in cash, which raises other questions.

I can't say for certain that before May 2015 Miss F had a gambling problem, but I think it's fair and reasonable for me to say that if Payday Express carried out proportionate checks, it would've seen the substantial other payday lending, the correct income of Miss F and her pattern of spending. It would've then realised all of the borrowing was unaffordable.

We generally expect any money borrowed to be repaid, even if the loans were unaffordable, and I think it's fair and reasonable for me to require Miss F to repay any money borrowed. But from the evidence available to me, it doesn't appear that Miss F owes any money."

In response to my provisional decision, Payday Express commented that it was standard practice for the industry only to check the position with one credit reference agency. It also pointed out that it was entitled to rely on information from Miss F. It also sent a copy of the credit checks it carried out in 2014 as I said the results were unknown; it noted that they didn't show any insolvency or county court judgments against Miss F. Payday Express felt I'd ignored guidance in place at the time it lent money to Miss F.

I've reviewed my provisional decision in light of the further comments from Payday Express, but I haven't changed my view. I did consider the guidance in place at the time but as Payday Express noted, it's wasn't fixed guidance – it took into account the individual circumstances of each case. The 2014 credit check information forwarded was helpful, but simply not being insolvent or not having a judgment against a consumer's name isn't enough to be a proportionate check. The information shows Miss F had delinquent accounts.

I agree lenders didn't have to check with every single credit reference agency, but they still had to carry out proportionate checks. In some cases, that may mean checking with more than one agency. I also agree lenders should be able to rely on information from consumers, though they should ask more questions if what the consumer says conflicts with other information held. In Miss F's case, I remain of the view that for both the revolving credit agreement and the payday loans the checks carried out weren't proportionate.

### **my final decision**

My final decision is that I uphold the complaint and Express Finance (Bromley) Limited (trading as Payday Express) should take the following action:

- refund all interest and fees paid by Miss F for all of the loans;
- pay 8% simple interest on the above sum from the date of payment until the date of refund;
- remove all negative information about all of the loans from Miss F's credit records;
- If Express Finance (Bromley) Limited (trading as Payday Express) considers it should deduct income tax from the interest element of my award it may do so but should give Miss F the necessary certificate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss F to accept or reject my decision before 3 April 2017.

Claire Sharp  
**ombudsman**