

complaint

Miss C complains that Instant Cash Loans Limited (trading as Payday Express) made short-term loans to her when it shouldn't have.

background

Miss C had Payday Express loans before and after February 2015. After that date, Instant Cash Loans Limited has traded as Payday Express. Before that date a predecessor company traded as Payday Express. And – as we can only deal with complaints against one regulated company at a time – we are dealing separately with Miss C's complaint about Payday Express loans before February 2015.

After February 2015 Payday Express made five loans to Miss C. She later complained that they were unaffordable.

The adjudicator recommended that the complaint should be upheld in part. She didn't think Payday Express were wrong to make the first four loans. But she didn't think it was right to make the last loan to Miss C. So the adjudicator recommended that Payday Express should:

1. refund all interest and charges that Miss C paid on her last loan;
2. pay interest of 8% simple a year from the date of payment to the date of settlement;
3. remove any negative information about the last loan from her Miss C's credit file.

Payday Express disagrees with the adjudicator's opinion. It says, in summary, that it didn't breach the relevant regulatory guidance in place at the time.

my findings

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

Miss C has sent us a copy of her credit report dated 2016. This shows that a lender recorded a default in 2012.

Although we're dealing separately with complaint about it, I will mention that the predecessor company made short-term loans to Miss C between 2012 and 2014. But I don't think that's relevant background because the last such loan was in June 2014 and there was a gap of nearly a year before she had another Payday Express loan.

From its records and her bank statements, I think that – after February 2015 - the Payday Express loans to Miss C were as follows:

1.	20.04.15	£270	repayable over two months	repaid 26.06.15
2.	01.07.15	£400	repayable over three months	repaid 25.09.15
3.	02.10.15	£400	repayable over three months	repaid 29.01.16
4.	29.01.15	£400	repayable over three months	repaid 25.04.16
5.	26.04.16	£500	repayable over five months	repaid 25.11.16

Before agreeing to lend to Miss C in 2015, Payday Express had to check that she could afford to repay the borrowing. There's no set list of checks that it had to carry out. But the checks had to be proportionate to things like – but not limited to – the size of the loan, the repayments and what the lender knew about Miss C.

I've seen evidence that – before making each of these loans - Payday Express recorded Miss C's monthly income as about £2,000.

It also recorded her outgoings on housing, credit, bills, food, transport etc.

Together, this information indicated that Miss C had disposable income of at least £500 per month.

From her bank statements, I can see that the income figure was broadly correct. And – as it contains details of her rent and other outgoings I find it more likely than not that all the recorded information about income and outgoings came from Miss C.

I haven't seen enough evidence that Payday Express did a credit search before making each of these loans. So I don't think it found out about the default from 2012. But – as it was a few years old - I can't say that the default alone should've prompted Payday Express to make further enquiries.

The monthly loan repayments on the first four loans were just under £200. That was within Miss C's recorded disposable income.

So – for the first four of these loans - I don't think Payday Express did anything wrong by not carrying out more checks.

And I can't say that Payday Express shouldn't have made the first four loans to Miss C.

But the fifth loan was for a higher amount. Although the monthly loan repayments were lower than before - about £150 - Miss C was entering into a financial commitment for five months to come.

And by April 2016, Miss C had already taken out a series of four instalment loans without much gap between repaying one and taking the next.

Miss C had a good repayment history.

But just because she was making repayments on time it didn't mean she was able to meet all of her commitments in a sustainable way. For example she might've been borrowing elsewhere to make those repayments or falling behind with other commitments. So I don't think her repayment history was a good indicator of affordability at this point.

I think Payday Express should've done more checks that the fifth loan would be affordable for her.

For a commitment like the fifth loan I think it would have been proportionate for Payday Express to have gathered much more information about Miss C's finances. It could have asked her for evidence of her income and expenditure. Or it could have reviewed her bank statements as I have done.

From the bank statements I've seen that Miss C underestimated her outgoings. I see that Miss C's normal monthly living costs were between about £1,400 and £1,600.

But in addition she was typically spending over £600 per month on online gambling.

So she regularly used an overdraft of about £5,000.

I think that - if it had carried out more proportionate checks – Payday Express would've seen other recent short-term borrowing funding spending on gambling.

I think it should've recognised that Miss C was struggling and couldn't afford the repayments - for months to come – if it made the fifth loan. I think it should've seen that Miss C couldn't afford repayment of the fifth loan in a sustainable way, that is without further short term borrowing.

So I don't think Payday Express should've made the fifth loan.

In the event, Miss C repaid Payday Express. But I don't think this shows that the lending was affordable. I accept her statement that she had help from her family.

And I find it fair and reasonable to make orders in relation to that fifth loan.

I will order Payday Express to refund all interest and charges Miss C has paid on that loan.

And I will order Payday Express to remove all adverse information from Miss C's credit file.

my final decision

For the reasons I've explained, my final decision is that I uphold this complaint in part. I order Instant Cash Loans Limited (trading as Payday Express) to:

1. in respect of the loan it made on or around 26.04.16:
 - 1.1 refund each amount of interest and charges that Miss C paid;
 - 1.2 pay simple interest on each sum that it refunds at a yearly rate of 8% from the date of Miss C's payment to the date of its refund. HM Revenue & Customs requires Payday Express to take off tax from this interest. It must give Miss C a certificate showing how much tax it's taken off if she asks for one;
 - 1.3 remove any adverse information from her credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss C to accept or reject my decision before 22 May 2017.

Christopher Gilbert
ombudsman