

## **complaint**

Mr R complains that Express Finance (Bromley) Limited trading as Payday Express ("Payday Express") gave him loans he couldn't afford to repay. He is particularly unhappy about interest that has been added when he was in a plan with a debt management company. He asks that it refunds interest and charges.

## **background**

I issued my provisional decision on Mr R's complaint in January 2017 which forms part of my final decision. In my provisional decision, I set out why I thought Mr R's complaint should be upheld. I asked both parties to provide any further comments before I reached my final decision.

Following this, Mr R confirmed he didn't have anything further to add. Payday Express responded with a few comments. In summary, it said:

- At the time of Mr R's loans, it followed OFT guidance and nowhere was it stipulated that there was a requirement to ask for bank statements before making a lending decision.
- It feels loans one and two were proportionate to the customer's declared income.
- It confirmed it held Mr R's income at the time of loan one being agreed and this was declared by Mr R to be £1,650 per month.
- Whilst I have stated that following a review of Mr R's credit file, he had other short term loans in 2010 and 2012, Payday Express has said that not all companies reported to the same Credit Reference Agencies. Therefore, may not have necessarily been visible.
- I have mentioned that Mr R was overdrawn and used online gambling merchants, but it wouldn't consider being overdrawn to be an indicator of financial difficulty neither would it consider gambling transactions as required expenditure. And gambling merchants don't report to Credit Reference Agencies, so even if had been using his salary in this manner, unless he informed it about this it wouldn't have known.

Payday Express went on to say that given the gap between loans one and two, it feels further checks should've been completed. And as such it would be willing to refund the interest and charges paid for loans two, three and four. In addition, it will award interest at 8% as outlined and remove these loans entries from Mr R's credit file.

## **my findings**

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

Although Payday Express has not agreed with all of my provisional decision, it has made an offer for loans two, three and four in line with my provisional decision. So I will therefore, not address these loans any further.

Looking at loan one, Mr R requested a sum of £400, which when interest was added totalled £500. This amount was due within one month, but an extension was agreed one month after and from the records I've seen, the balance was repaid two months from the original lend date. Payday Express has said that the checks it completed were proportionate to Mr R's declared income of £1,650. It has said that at the time it would've completed a credit check.

But the results of the credit check haven't been provided and so I'm unable to determine from what has been sent what the check showed. Payday Express has also been unable to provide any income and expenditure information, but has said that this and requesting bank statements wasn't a requirement at the time.

I have thought about this. But given the amount requested, his income and the fact that repayment was due within a short period of time, I think that Payday Express should've asked Mr R for some additional information regarding his monthly living costs and financial commitments.

With this in mind, as outlined in my provisional decision, I've gone on to consider what these checks might have shown. And whether these should've led Payday Express to decide the borrowing Mr R was requesting was unaffordable. As outlined in my provisional decision, I can see that Mr R was short term borrowing from other lenders in 2010. I note Payday Express' comment about information not necessarily being provided to all Credit Reference Agencies. But I think that had it asked Mr R about his monthly living costs, regular financial commitments and other short term borrowing, it would've seen that the loan wouldn't have been affordable to him and he wasn't able to repay the loan within the time given.

It follows therefore that I uphold Mr R's complaint.

### **fair compensation**

My decision is that I uphold this complaint. Express Finance (Bromley) Limited should:

- Refund all interest and charges applied to the loans Mr R took out between December 2010 and November 2012.
- Pay interest at 8% simple per year from the date each sum was paid until the date of settlement.
- This should be offset against any outstanding capital sum, with any remaining balance to be paid to Mr R; and
- Remove any adverse information about the above loans from Mr R's credit files.

If tax is deducted from the 8% interest awarded, appropriate documentation should be provided to Mr R for HMRC purposes.

**my final decision**

For the reasons I've given above and in my provisional decision of January 2017, I uphold Mr R's complaint.

Express Finance (Bromley) Limited trading as Payday Express should award Mr R compensation in line with what I have outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 16 March 2017.

Donna Parsons  
**ombudsman**

## **COPY OF PROVISIONAL DECISION**

### **complaint**

Mr R complains that Express Finance (Bromley) Limited trading as Payday Express ("Payday Express") gave him loans he couldn't afford to repay. He is particularly unhappy about interest that has been added when he was in a plan with a debt management company. He asks that it refunds interest and charges.

### **background**

Based on the information available at the time, the adjudicator recommended the complaint thought to be about payday loans should be upheld. He was only made aware of credit from an £80 top up in May 2012 onwards. He thought this amount was fine, but he didn't think the checks that were carried out from the loan in September 2012 onwards went far enough. He said he couldn't see that Payday Express had asked Mr R about his outgoings or questioned these or why it was he needed to borrow further funds before he'd repaid loan two. He felt that if better checks had been completed, then Payday Express would've seen that Mr R had taken out a number of other payday loans and it would've seen he couldn't afford to repay these loans. The adjudicator said that Payday Express should refund interest and charges paid on loans two, three and four, pay interest on all refunds, apply the refund to reduce any outstanding capital and pay any remaining balance to Mr R. He said it should also remove any negative information about loans two, three and four from Mr R's credit file.

Payday Express didn't respond to the adjudicator's assessment and so the matter has been passed to me for consideration. However, Payday Express has since told us that the loans were constructed slightly differently to the information that had been presented to the adjudicator previously and further loans have been identified.

I think it would be helpful here to outline the loans Payday Express has said Mr R took out. It says it agreed several short term loans with Mr R. Mr R's first short term loan was for £400 in December 2010. An extension to the repayment period was allowed and the loan was repaid in full in February 2011.

In May 2012, Mr R took out a £400 loan with Payday Express. A top up of £80 was added to this nine days later and an extension was granted before payments were taken. He repaid the loan in June 2012.

Mr R then took out a loan in September 2012 for £300. I can see that the repayment period for the September loan was extended, with solely the extension fee being paid before a top up was applied in October of £280. Following this, a further extension was applied and then a few payments made before a further top up of £40 in November. The loan remains open.

I would add that Mr R says he notified Payday Express that he had contacted a Debt Management Company in November 2012. Payday Express advised that it will need to hear from the Debt Management Company within 14 days. However, Payday Express has said that it suspended interest from 8 January 2013 when it had heard from the Debt management company. No charges were applied to the account after 6 January 2013.

In recent correspondence, Payday Express did make an offer to partially refund some of the interest charged. But Mr R has refused this and so the matter I've reviewed this complaint.

### **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.

The rules and guidance applicable to short term lending at the time each of the loans were taken required Payday Express to lend to Mr R responsibly. This meant that before giving Mr R the loans, Payday Express had to make sure he could afford to repay them. There was no set list of checks it had to perform, but any checks needed to be proportionate to things like the size of the loans and Mr R's circumstances.

I've first looked at the checks Payday Express completed when Mr R applied for the loans. Payday Express says it completed a credit and identity check. It has also said it would've looked at income and previous repayment history. But there's no evidence of this. Results of the credit checks haven't been provided, although I note Payday Express did have a record of what it said Mr R told it regarding his income when he took out the later loans.

From what has now been presented, Payday Express agreed several short term loans with Mr R. Mr R's first short term loan was for £400 in December 2010. As outlined, an extension to the repayment period was allowed and the loan was repaid in full in February 2011. We don't know from the information Payday has provided, what income he provided at the time. But Mr R has told us it was close to £1,600. Looking at this, I think it should've asked Mr R for some additional information regarding his monthly living costs and regular financial commitments. From what I've seen, I don't think Payday Express has shown that it did sufficient proportional checks before lending Mr R the money.

In May 2012, when Mr R took out a £400 loan with Payday Express, he added a top up of £80 nine days later. An extension was also granted before payments were taken. The loan was repaid in June 2012. I can see from the loan agreement sent that this was an initial loan period of 26 days and that Payday Express may agree an extension of up to a further 28 days.

Mr R then took out a loan in September 2012 for £300. Although Payday Express has said that this was a rolling agreement from the previous loan, I haven't seen any evidence to support this. As outlined above, based on the information contained on the loan agreement from May 2012, this was for a set period of time. I have therefore considered this to be a separate loan. Looking at the statement of account held with Payday Express, I can see that the repayment period for the September loan was extended, with solely the extension fee being paid before a top up was applied in October of £280. Following this, a further extension was applied and then a few payments made before a further top up of £40 in November. The loan remains open; however, Payday Express has said that it suspended interest from 8 January 2013 when it had heard from the Debt management company on behalf of Mr R. No charges were applied to the account after 6 January 2013.

As outlined above, results of the checks Payday Express said it completed haven't been provided. But even if I was persuaded that Payday Express had conducted checks in 2012 (and 2010), performing checks in itself isn't enough – a lender also needs to react appropriately to what those checks show. This might necessitate further investigations or a decision to not lend at all. So by being unable to show me the results of the checks that were performed – I cannot be sure that the checks Payday Express did, or its response to the results were enough.

So I've gone on to consider what these checks from 2010 and 2012 might have shown, and whether these should've led Payday Express to decide the borrowing Mr R was requesting was unaffordable.

As outlined above, we don't know what information Payday Express had about the loan in 2010. But based on what Mr R has said, his income was £1563 increasing to £1655 towards the end of 2010 and Payday Express has said Mr R's income was £1,650 in 2012 (increasing to £1,800 after the last top up in November 2012). Having looked at Mr R's credit file, I can see that he had been short term borrowing from other lenders in 2010 and 2012. So I think the information that Payday Express

would've seen from the credit searches it says it undertook at the time should've led it to make some further checks.

I have also looked at Mr R's bank statements from around the times. From these I can see he was overdrawn, online gambling and he was borrowing from other lenders. So it doesn't look like his circumstances changed significantly during this period. And it looks as though he needed to borrow this money to meet other commitments. This would've shown the lender, quite clearly, that Mr R wasn't going to be able to repay the loans in a sustainable manner without resorting to further borrowing. So I don't think that any additional lending would've been affordable to Mr R and so Payday Express shouldn't have lent him these loans and top ups.

It follows therefore that I uphold Mr R's complaint.

### **fair compensation**

My decision is that I uphold this complaint. Express Finance (Bromley) Limited should:

- Refund all interest and charges applied to the loans Mr R took out between December 2010 and November 2012.
- Pay interest at 8% simple per year from the date each sum was paid until the date of settlement. This should be offset against any outstanding capital sum, with any remaining balance to be paid to Mr R; and
- Remove any adverse information about the above loans from Mr R's credit files.

If tax is deducted from the 8% interest awarded, appropriate documentation should be provided to Mr R for HMRC purposes.

### **my provisional decision**

For the reasons outlined above, I intend to uphold Mr R's complaint against Express Finance (Bromley) Limited.

I'll wait two weeks to see if either party has anything further to add – before considering my decision on this complaint once more.

Donna Parsons  
**ombudsman**