

complaint

Mr A complains that Instant Cash Loans Limited (trading as Payday Express) gave him three short-term instalment loans that he couldn't afford to repay.

background

Mr A borrowed three short-term instalment loans between 18 March 2015 and 28 October 2015 from Instant Cash Loans Limited trading as Payday Express. Mr A had previously borrowed three other loans from Payday Express' previous owner – Express Finance (Bromley) Limited between 5 December 2014 and 22 January 2015. Mr A repaid five of the loans in full. But a balance of £1,081.66 is outstanding on the last loan.

One of our adjudicators looked into Mr A's complaint about Instant Cash Loans Limited trading as Payday Express. She noted that Payday Express had already refunded the charges and interest Mr A had paid on the loan taken in March 2015 - loan four in the chain of Payday Express loans. So she didn't think we needed to look further into this loan.

But she didn't think enough checks had been done for the other two loans (loans five and six in the chain). And, having looked at Mr A's circumstances, she thought that these loans were unaffordable. So she asked Payday Express to pay Mr A some compensation.

Payday Express didn't agree with our adjudicator's findings with regard to loans five and six. It said these loans were provided in accordance with the Consumer Credit Sourcebook (CONC). So the complaint came to me for a final decision.

For the sake of clarity, this decision relates to the three loans lent by Payday Express when it was owned by Instant Cash Loans Limited (loans four, five and six). The complaint about Express Finance (Bromley) Limited will be addressed separately.

my findings

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

Payday Express was required to lend responsibly. It needed to make checks to see whether Mr A could afford to pay back each loan before it lent to him. Those checks needed to be proportionate to things such as the amount Mr A was borrowing, how much he had to repay each month (including interest) and his lending history with it. But there was no set list of checks Payday Express had to do.

Payday Express has indicated that it has already made a refund in respect of loan four in line with what this service would normally recommend if we considered a specific loan should be upheld - i.e. it has refunded the interest and charges applied to the loans. And it has added 8% simple interest. Payday Express has also told us it has removed any record of this loan from Mr A's credit file. So I haven't considered the sale of this loan further.

So I've looked at the information Payday Express gathered when it agreed the following two and what it knew about Mr A from all his previous applications.

I can see that Payday Express asked Mr A about his income and expenditure. But by this point in Payday Express's relationship with Mr A, I think it should've been making much more detailed checks. The regulations (CONC) in place at the time these loans were provided to Mr A say that 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 regulatory guidance goes on to say that '*repaying credit in a sustainable manner means being able to repay credit "out of income and/or available savings" and without "undue difficulty."*' And it defines "*undue difficulty*" as being '*able to repay credit while also meeting other debt repayments and normal/reasonable outgoings*' and '*without having to borrow further to meet these repayments*'.

Loans four and five were for much more than the early loans - £1,000. And the higher monthly repayments (£337.62) needed to be sustained over a longer period of time. Whilst I note Payday Express has said there was a three month gap in between loan four being repaid and Mr A requesting loan five, the evidence I've seen doesn't support this. The loan schedule provided to us by Payday Express shows that loan five was taken on the same day as loan four was repaid. And while I accept the fifth loan was repaid early, Mr A requested loan six the same day as he repaid loan five. This all suggests to me that Mr A was relying on each new loan to repay the previous loan. So on these occasions, I think Payday Express should've been asking Mr A for some evidence to support what he was saying about his income and expenditure.

I accept lenders aren't required to review bank statements. But when Mr A applied for the fifth and sixth loans in quick succession, I think the checks Payday Express needed to do go beyond those carried out before. And checking bank statements is just one way this could've been done. And I think that if it had asked Mr A to verify the information he was providing, based on what I've seen, I think Payday Express would've known that Mr A didn't have the disposable income to repay these loans his declaration about his income and expenditure indicated he had. Mr A's statements show he was gambling and borrowing from other short-term lenders. And that he was making payments to a debt management company. And I don't think Payday Express would've agreed to provide Mr A with these loans in the circumstances.

It follows therefore that I uphold Mr A's complaint about loans five and six. And Payday Express needs to pay him some compensation.

putting things right

I don't think that Payday Express should've agreed to lend to Mr A loans five and six. So it should:

- refund all interest and charges that Mr A has paid on these loans;
- add simple interest at a rate of 8% per annum to these amounts from the date they were paid to the date of settlement *;
- If Payday Express is still owed the outstanding capital balance from loan six then it can deduct this amount from the amount it needs to pay Mr A.
- remove any adverse entries relating to these loans from Mr A's credit file.

*HM Revenue & Customs requires Payday Express to take off tax from this interest. It must give Mr A a certificate showing how much tax it's taken off if he asks for one.

my final decision

For the reasons given above, I uphold Mr A's complaint and I require Instant Cash Loans Limited trading as Payday Express to put things right as detailed above.

Mr A's complaint about Express Finance (Bromley) Limited trading as Payday Express has been addressed separately.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 May 2017.

Sandra Greene
ombudsman