

complaint

Mr L complains that Express Finance (Bromley) Limited (trading as Payday Express) gave him loans he couldn't afford to repay. He also complains about how it treated him when he had difficulty repaying his debts and entered into a debt management plan (DMP). Mr L asks that Payday Express refunds interest and charges, with statutory interest, deletes the loans from his credit file and pays compensation for the hardship it caused him.

background

Mr L took out a £500 loan with Payday Express in September 2013. The loan was rolled over once. Mr L says he was borrowing from other short term lenders.

Mr L entered into a DMP in early 2014. He says Payday Express took payments agreed with the organisation helping him with his DMP. Despite this, it recorded a default on his credit file and sold the loans to a debt collector, which threatened legal action.

The adjudicator recommended that the complaint should be upheld, saying:

- Payday Express didn't carry out proportionate checks before it lent to Mr L. Mr L said his monthly income was £1,459. The loan required a repayment of £645. Given the amount of the loan and Mr L's stated income, Payday Express should have asked about Mr L's living costs, regular financial commitments and short term commitments.
- Mr L's normal monthly living costs, such as rent, food, transport and mobile phone, were about £1,000. This didn't leave enough income to repay the loan. It wasn't affordable.

The adjudicator said Payday Express should refund interest and charges, with 8% interest, and remove any negative information about the loan from Mr L's credit file. He said Payday Express could buy the loan back from the third party or settle the debt with the third party and pay the refund to Mr L.

Payday Express didn't agree. It said it was entitled to rely on information from Mr L about his income and outgoings, which suggested the loan was affordable. It said the results of its credit check didn't suggest it needed to do further checks.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. Where the evidence is incomplete, inconclusive or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in light of the available evidence and the wider circumstances.

Mr L took out a loan for £500 in September 2013. The repayment due in October 2013 was £645. Mr L said his income was £1,459 and Payday Express did a credit check.

Payday Express says it's entitled to rely on the information Mr L provided about his income and outgoings. But the information it provided suggests that Mr L didn't provide information about his outgoings before he took out the loan. The results of the credit check show one delinquent account. While this doesn't mean Payday Express can't lend to Mr L, it should take it into account when deciding what checks are proportionate.

I don't think the checks made by Payday Express were proportionate, given the amount of the loan and Mr L's stated income. I think it should have asked about his normal living expenses, regular financial commitments and short term commitments to assess whether the loan was affordable.

I've looked at Mr L's bank statements as this is the best evidence available to me about his outgoings in 2013. Mr L's normal monthly living costs, such as rent, food, transport and mobile phone, were about £1,000. In the week after taking out the loan Mr L made payments to short term lenders of more than £1,800. I think if Payday Express had asked about Mr L outgoings and short term commitments it would have known that the loan wasn't affordable.

Mr L deferred repayment of the loan once and then defaulted on the repayment. In February 2014 the organisation helping Mr L with his debts told Payday Express he was in a DMP. Instalment payments were agreed and no further default interest or charges were applied.

Mr L says he thought the debt had been repaid when his DMP ended. While I can understand it was upsetting to receive letters from a third party about an outstanding debt, I haven't seen anything to suggest the account statement provided by Payday Express is incorrect. I think it's more likely the balance used when the DMP was set up was incorrect as it didn't include default interest applied before Payday Express was told about the DMP.

I don't think Payday Express should have agreed to lend to Mr L. So it should:

- Refund all interest and charges that Mr L paid on the loan;
- Pay interest of 8% simple a year on all refunds from the date of payment to the date of settlement*;
- Write off any unpaid interest and charges (including default interest and charges);
- Remove any negative information about the loan from Mr L's credit file.

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

As Payday Express has sold the debt, it should either buy the debt back or settle the debt on behalf of Mr L.

my final decision

My decision is that I uphold this complaint. I order Express Finance (Bromley) Limited to amend Mr L's credit file and pay the compensation as described above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 August 2017.

Ruth Stevenson
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