

complaint

Mr C has complained about a short-term loan granted to him by Instant Cash Loans Limited trading as Payday Express.

background

Payday Express agreed three loans for Mr C in 2015. In this decision I am only considering his third and last loan as the first two are being dealt with under a separate complaint. This loan was for £780 taken out in April 2015 and due to be repaid over three months. As it transpired Mr C was unable to pay this back as agreed and entered into a repayment plan with the lender in early May. I understand that this loan has now been repaid.

Mr C says that he was struggling financially when Payday Express agreed to lend to him and that it lent irresponsibly.

One of our adjudicators reviewed this complaint and recommended that Payday Express refund the interest and charges Mr C paid for this loan. Payday Express did not agree with the adjudicator's recommendation. And so the complaint has come to an ombudsman to make a final decision.

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 have also taken into account the law, any relevant regulatory rules and good industry practice at the time.

Payday Express was required to lend responsibly. It needed to check that Mr C could afford to repay his loans sustainably. There was no set list of checks it needed to do, but the checks should have been proportionate to the circumstances of each loan which might include considerations about the amount borrowed, the associated cost and risk to Mr C, his borrowing history including any indications that he might be experiencing (or had experienced) financial difficulty, and so on.

Payday Express says that it asked Mr C about his income and expenditure when he applied for this loan and the information he provided showed he had a disposable monthly income of £1,010. The lender says that it didn't check his credit file at this point but that a check had been carried out when Mr C first applied for credit in January 2015. It says that at no time was it required to carry out a credit check for every loan application. It also says it was entitled to rely on the information Mr C provided about his income and expenditure. And that this loan was an instalment loan with three monthly repayments of £368.

The Financial Conduct Authority was the regulator at the time Mr C borrowed from Payday Express. Its regulations for lenders are set out in its consumer credit sourcebook (generally referred to as "CONC"). I agree with Payday Express in that the regulations are not prescriptive about what checks should be carried out. And I also think that, in this case, it was entitled to rely on the information Mr C gave unless it had cause to question its veracity.

However, the regulations require lenders to take “*reasonable steps to assess the customer’s ability to meet repayments under a regulated credit agreement in a sustainable manner without the customer incurring financial difficulties or experiencing significant adverse consequences.*” - CONC 5.3.1(2). CONC 5.3.1(7) defines ‘sustainable’ as being able to make repayments without undue difficulty. And explains that this means borrowers should be able to make their repayments on time and out of their income and savings without having to borrow to meet these repayments.

When Mr C asked to borrow this loan, he had already taken out two loans with Payday Express. So the lender knew about Mr C’s borrowing history. This was his third loan taken out consecutively. And even though he might have repaid earlier loans successfully, that isn’t the same thing as managing to repay them in a *sustainable* manner. I think at this point Payday Express should have been alerted to the possibility that Mr C might not have asked for this loan to meet an unexpected expense but rather to meet his normal living expenses, given the frequency of his borrowing. And so he might have difficulties repaying the loan out of his normal means. So I think it should have enquired further into Mr C’s outgoings at this point, and queried the information he’d given about having a disposable income of more than £1,000.

Mr C has provided his bank statements for the period in question. These show that while his income was generally more than he’d told Payday Express, his outgoings varied according to the short-term loans he needed to repay and how much he spent on what appears to be gambling. In the three months preceding this loan Mr C’s spend on existing short-term lending, loans from relatives, some standard bills such as phone and car tax, and regular spend on gambling left him with little or no available money to repay further credit. And this is before considering any money for food or travel and other normal living costs.

Had Payday Express carried out what I would consider would have been a proportionate check and asked Mr C for further information about his expenditure including any short-term borrowings or, for example, asked to see his bank statements, it would have learnt the extent of his indebtedness and, as a responsible lender, would not have agreed this loan for him. And so I am upholding this complaint.

what Payday Express should do to put things right

As I’ve explained above, I think Payday Express shouldn’t have agreed to lend to Mr C in this instance. In order to put this right I think it should:

- refund all interest and charges for the loan it agreed in April 2015.
- pay interest on these refunds at 8% simple* per year from the dates of payment to the dates of settlement.
- remove any adverse information about this loan from Mr C’s credit file.

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

my final decision

I uphold Mr C's complaint for the reasons I've explained and require Instant Cash Loans Limited trading as Payday Express to refund his interest and charges as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 18 May 2017.

Michelle Boundy
ombudsman