

complaint

Mr H has complained about payday loans he took out with Express Finance (Bromley) Limited (trading as Payday Express). He says Payday Express didn't check whether the loans were affordable, and had it done so, it wouldn't have lent to him.

background

A summary of Mr H's borrowing history is as follows;

loan number	loan amount	received date	actual repayment date
1	£200.00	11/11/2011	30/11/2011
	£360.00	12/11/2011	
2	£560.00	30/11/2011	31/07/2012

Payday Express raised an objection to this service considering the first 10 loans because it says Mr H complained too late. An adjudicator considered what Payday Express and Mr H gave us and he agreed with Payday Express. He concluded we could only consider loans taken out after August 2010.

Another adjudicator then investigated whether Payday Express should've given Mr H the above loans. And she thought that Payday Express carried out sufficient checks, so it wasn't wrong to lend Mr H the loans. She then went on to explain that even if Payday Express hadn't done enough – a proportionate check would've shown the loans were affordable by taking into account Mr H's income and his outgoings – including his repayments to other short term creditors.

Mr H didn't agree with the adjudicator's recommendation. In response he made a number of points, including;

- Payday Express should've been aware he was in financial difficulties,
- he had a long history of borrowing,
- both his bank statement and credit report showed lots of short term lending,
- he was gambling and
- at times he missed payments to Payday Express.

Mr H went onto say that there was nothing in the loan agreement from June 2010 (loan 10) that allowed Payday Express to roll over the loan the number of times it did without his permission. And Mr H feels Payday Express should've defaulted the loan earlier, and had it done so, it wouldn't have lent to him again.

The case has now been passed to me for a decision. But I'm aware that before the loans mentioned above, Mr H had 10 other loans and I've kept this in mind while coming to my decision.

In my provisional decision I set out why I was minded to uphold the complaint. I invited both parties to let me have any further comments and evidence. Mr H has told us he doesn't have anything further to add. Payday Express didn't respond to the provisional decision.

my findings

I've once more considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint. But as neither party has anything further to add, I see no reason to depart from the conclusions I reached in my provisional decision. And I've explained my reasons below.

Firstly, I'm going to be looking at the loans mentioned above, and then I'll move onto the deferrals that Mr H paid on a loan he took out with Payday Express in June 2010. But I'm not able to look at the lending decision for the June 2010.

Payday Express had to gather enough information to be able to make an informed decision as to whether it was going to lend. The guidance and rules didn't set out what checks must be done before lending was approved. However, Payday Express needed to conduct enough checks to make sure the loan was affordable. And these needed to be proportionate to a number of things such as the size of the loan and when the loan was due to be repaid.

But even if the checks Payday Express carried out weren't proportionate, that alone doesn't mean Mr H's complaint should be upheld. I say this because, it's possible, had further checks been carried out by Payday Express they could've shown Mr H was able to afford his loans. So Payday Express wouldn't have been wrong to lend him the money.

Payday Express says that for each lending decision it asked for Mr H's income and it then used its own commercial judgement to decide whether it should lend. And it says that based on the information it gathered about Mr H, it was reasonable to lend to him. But I've thought about what Payday Express says and Mr H's circumstances at the time each loan was approved. And having done so, I don't think the checks Payday Express carried out went far enough.

The above loans were actually loans 11 and 12 in a chain of borrowing that went back to 2009. Although Mr H hadn't taken any new lending for over 18 months, he had deferred repayments for loan 10 (between June 2010 and October 2011). And loan 11 was taken only a couple of weeks after loan 10 had been fully repaid. Mr H also took loan 12 on the same day that he repaid loan 11. So firstly, I'm satisfied this forms one chain of borrowing and secondly, taking into account the above this should've have made Payday Express gather more information about Mr H's circumstances, rather than just relying on what Mr H told it.

Payday Express should've had a full understanding of Mr H's financial circumstances, which would've included verifying the information he was giving it. It could've done this a number of ways, such as for asking for evidence of Mr H's income and expenditure or it could've asked to see his banks statements, which is what I've done here. Mr H's bank statements are the best indication of his ability to repay the loans at the time, so I don't think it's unreasonable to rely on these.

Having looked at Mr H's bank statements, I don't think he had the ability to repay the loans because it's clear from the statements that Mr H was reliant on payday loans. When Payday Express approved loans Mr H was regularly spending more than his income each month on repaying other short term creditors. For example in October 2011, he repaid over £6,000 to other short term creditors.

Mr H also had his regular living costs, and was also spending money on gambling – which didn't leave any disposable income to be able to afford what he was committed to repaying. And I think that had Payday Express undertaken proportionate checks this would've been brought to its attention and it wouldn't have lent to Mr H.

Turning to the second part of Mr H's complaint. Mr H says he didn't give permission to extend loan number 10 to October 2011. Mr H has pointed us to the credit agreement for the loan, which says Payday Express '*... may at your request and at out absolute discretion to defer payment of what you owe for a period which would not normally exceed one calendar month*'.

Payday Express says that it did nothing wrong by extending the loan the number of times that it did - Mr H signed the loan agreement and there were no regulations at the time that told it how many times the loan could be deferred.

But I'm afraid I disagree with Payday Express. I think that Payday Express has failed to take into account that by the time of the fourth deferral Mr H was paying more than the capital he borrowed in interest. And, in these circumstances, I don't think it's unreasonable to expect a lender to make further enquiries into why he was deferring the loan so many times and carry out further checks to see if the loan is affordable.

The number of deferrals should've also alerted Payday Express to the fact that he might not have been using the loan as a short-term solution to a temporary cash flow problem – this type of borrowing was never designed to be sustained over a number of months. And this should've prompted Payday Express to carry out further checks into just why it was Mr H was deferring his loan.

I can only look at the deferrals after August 2010, and I think by October 2010 Payday Express ought to have been doing more to find out about Mr H's situation. By now this was Mr H's fifth deferral and he had also incurred a default charge. And taking into account Mr H's previous loan history, I think, from this point onwards Payday Express should've taken further steps to verify the information that Mr H had given it.

I think that the checks would've shown Mr H was spending a significant amount of his monthly income servicing short term credit commitments as well as gambling. So I think that proportionate checks would've clearly shown Payday Express that Mr H was unlikely to be able to repay what she was being asked to commit to without it adversely affecting his financial position. And I think Payday Express wouldn't have agreed to any more rollovers.

what Payday Express should do to put things right

To put things right for Mr H, Payday Express should:

- refund all interest and charges as a result of the deferrals from and including 1 October 2010,
- refund all of the interest and charges applied to loans one and two,
- add interest at 8% per year simple on the above interest and charges from the date they were paid to the date of settlement †;
- remove any adverse information recorded on Mr H's credit file because of these loans.

†HM Revenue & Customs requires Payday Express to take off tax from this interest. Payday Express must give Mr H 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 H's complaint.

Express Finance (Bromley) Limited should pay Mr H compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 5 October 2017.

Robert Walker
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