

The complaint

Mr G is unhappy that American Express Services Europe Limited (“Amex”) recorded a default on his credit file.

What happened

In February 2019, Mr G began to fall behind with payments on his Amex credit card. In May 2019, Amex passed Mr G’s account to a debt collection agency, with whom Mr G agreed a repayment plan.

Mr G didn’t make the payments that he originally agreed with the debt collection agency, but he did make payments toward the balance and cleared the outstanding amount in October 2019. However, shortly before clearing the balance, Mr G discovered that Amex had recorded a default on his credit file.

Mr G wasn’t happy that a default had been recorded, especially as his conversations with the debt collection agency had led him to believe that this wouldn’t be the case. So, he raised a complaint.

Amex looked at Mr G’s complaint, but they noted that Mr G hadn’t kept to the schedule of the payment plan that he’d agreed with the debt collection agency, and they felt the default was justified for this reason. So, they didn’t uphold the complaint.

Mr G wasn’t satisfied with Amex’s response, so he referred his complaint to this service. One of our investigators looked at this complaint, but they also felt that the default hadn’t been applied unfairly, so they also didn’t uphold the complaint.

Mr G remained dissatisfied, so the matter was escalated to an ombudsman for a final decision.

What I’ve decided – and why

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

I issued a provisional decision on 7 April 2021, in which I stated as follows:

Amex referred the complaint to the debt collection agency in May 2019. It’s important to note that this was not a sale of debt, but rather that Amex engaged the debt collection agency to attempt to recover the outstanding balance on Amex’s behalf.

Amex recorded the default against Mr G’s credit file in September 2019, and Amex have confirmed that this was because Mr G didn’t adhere to the terms of the payment plan that he’d agreed with the debt collection agency.

However, in late August 2019, shortly before the default was applied, the debt collection agency sent Mr G an email containing the following message:

“The last payment on your American Express account was on 19th July. If no further payment is made within 45 days of that the account may be recalled and a possible default registered on your credit file. Would it be possible to make an affordable payment of at least £866? This will retain the account.”

This was an important message. But I don't feel that it was a sufficiently clear one. For instance, I can easily understand how this message could be misread as meaning that Mr G had 45 days from the date of the message to make a payment toward the account to avoid the possibility of a default being applied to the account.

It also must be noted that Mr G's own communication to the debt collection agency, which prompted the above message, explained that he was in the middle of an intensive work schedule in the US and would return home and make a payment within the next two weeks. And Mr G did make a payment on 9 September 2019 and cleared the balance in full by 29 October 2019.

I understand that when read correctly the message explains that if a payment isn't received within 45 days of the last payment made by Mr G on 19 July 2019 then the account might be defaulted – which gave Mr G until 2 September 2019. But as mentioned, I don't feel that this is sufficiently clear. And clarity of communication is what this service would expect here.

It isn't the fault of Amex that the communication issued by the debt collection agency was unclear in this instance. But the debt collection agency was acting on Amex's behalf, and the end result here – that Mr G's account was defaulted – doesn't feel fair in this instance, given what I have explained above.

This means that I will be provisionally instructing Amex to remove the default from Mr G's credit file and instead to amend their report to the credit reference agencies to show that Mr G's account remained in arrears until the balance was cleared by Mr G on 29 October – also taking into account the partial payments that Mr G made leading up to his clearing the remaining balance. And I feel that this represents a fair and reasonable resolution to this complaint.

In my provisional decision, I gave both Mr G and Amex until 7 May 2021 to provide any comments of further information that they wished me to consider, before I moved to issue a final decision.

Mr G confirmed that he had no further comments to add, while Amex did not respond. As such, I see no reason to not uphold this complaint on the basis explained in my provisional decision, and so I will be upholding this complaint on that basis.

Putting things right

Amex must remove the default from Mr G's credit file and instead amend their report to the credit reference agencies to show that Mr G's account remained in arrears until the balance was cleared by Mr G on 29 October 2019 – reporting the amount of arrears accurately and taking into account the partial payments made by Mr G leading up to his clearing the outstanding balance.

My final decision

My final decision is that I uphold this complaint against American Express Services Europe Limited on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 7 June 2021.

Paul Cooper
Ombudsman