

## **The complaint**

Mr E is unhappy that American Express Services Europe Limited (“Amex”) suspended his account on the basis of persistent debt.

## **What happened**

Amex sent Mr E several letters regarding his account being considered as being in a state of persistent debt. One of these letters, sent in June 2019, advised Mr E that following a review in another nine months, if his account remained in a state of persistent debt his account might be suspended for further use. This meant that the final review of Mr E’s account would be undertaken in March 2020.

However, because of the emergence of the Covid-19 global pandemic at the start of 2020, the Financial Conduct Authority (FCA) mandated that persistent debt reviews such as the one due in March 2020 on Mr E’s account should be delayed until at least October 2020.

In May 2020, Mr E began making larger monthly repayments on his Amex credit account - as it was suggested that he should by the previous persistent debt communication he’d received from Amex. However, in October 2020, Amex conducted their review of Mr E’s account and made the decision to suspend the account for further use on the basis of the account’s persistent debt status. Mr E wasn’t happy about this, so he made a complaint.

Amex looked at Mr E’s complaint. But they felt that they’d acted in accordance with FCA guidance on how to manage accounts that met the criteria for being in persistent debt, so they didn’t uphold Mr E’s complaint.

Mr E 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 didn’t feel that Amex had acted unfairly or unreasonably here, so they also didn’t uphold Mr E’s complaint.

Mr E 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 this complaint on 4 October 2021 as follows:

*The FCA considers that a credit account is in a state of persistent debt if the level of interest which accrues on that account is such that the monthly payments made towards the account by the customer result in the customer paying more in interest and charges than they do towards paying off the capital balance on the account, over a prolonged period.*

*This can often be the case where a customer is paying close to the minimum payment required on the account, which can result in the customer repaying the monthly interest that accrues on the account but making little progress towards reducing the actual capital balance outstanding on the account - meaning that monthly interest payments at a similar level keep becoming due.*

*Because of concerns about the long-term viability of such a situation for credit account holders, the FCA issued new rules surrounding how a credit provider must manage accounts that are considered as being in a state of persistent debt. These rules came into force in March 2018 and include that a credit provider must send letters to persistent debt customers advising that their account is considered as being in persistent debt and explaining the level of additional monthly payment that the customer needs to make so that their account is no longer considered as being in such a state.*

*These letters should also advise customers of the potential consequences, should their account remain in a state of persistent debt, which can include the suspension of the account and the initiation of a payment plan designed to clear the full outstanding balance over a period of no more than four years.*

*Amex contend that they followed the FCA rules surrounding persistent debt in this instance. They sent the requisite letters to Mr E, and when Mr E didn't make the payments necessary to take his account out of persistent debt, Amex suspended Mr E's account and advised Mr E of the need to clear the full outstanding balance owing on the account.*

*But the FCA's position on persistent debt isn't as routine as I've explained above, and in February 2020 the FCA contacted credit providers and updated its position, and made specific reference to how a business should treat persistent debt 36-month ("PD36") customers - such as Mr E is in this instance - and also provided clarification on when a credit provider should suspend a customer account, and when not to.*

*For instance, regarding account suspensions, the FCA state:*

*"We are also concerned that some firms may be planning a 'blanket' suspension of credit cards for all their PD36 customers.*

*The PD rules only require the suspension or cancellation of cards where a customer:*

*a) does not respond to the repayment options proposed within the time specified by the firm;*

*b) confirms that one or more of the proposed options are affordable but that they will not make the increased payments.*

*We remind firms that ... when they choose to suspend or cancel a customer's access to credit they must serve customers with a notice giving reasons for this, and those reasons must be objectively justified.*

*There is no regulatory requirement (outside of those mentioned above) that a card must be suspended where a customer is in persistent debt, so an objective justification could not rely on such a requirement."*

*In this instance, Mr E did respond to the repayment options proposed by Amex within the time specified, and I say his because he increased the monthly repayments that he was making on the account in May 2020, which was before the review of the account that had been put back to October 2020 as a result of the FCA mandate was due. As such, I'm satisfied that clause (a) above doesn't apply here.*

*I'm also satisfied that clause (b) above doesn't apply here, and I say this because it wasn't the case that Mr E contacted Amex and confirmed that he could afford the suggested higher repayments but refused to make them, and this is evidenced by the fact that Mr E did increase the monthly minimum payments on the account in May 2020 as previously stated.*

*It follows from this that my position here that Mr E's acceptance that higher monthly payments needed to be made on the account, and his making of those higher payments, means that there was no requirement resultant from the FCA's rules on persistent debt that Mr E's account should be suspended, and it therefore becomes incumbent on Amex to have provided Mr E with an objectively justified reason as to why it was suspending Mr E's account which doesn't depend on the FCA persistent debt rules for its justification.*

*But it's evident from the correspondence that Amex have sent to Mr E that their decision to suspend his account was based on their interpretation of the FCA persistent debt rules and wasn't objectively justified by any other reason than those rules.*

*Because of this, I can confirm that I do not consider that Amex's decision to suspend Mr E's account and the subsequent implementation of that decision can be considered as being fair and reasonable and it follows that I will be upholding Mr E's complaint on that basis.*

*Furthermore, as mentioned previously, the FCA update in February 2020 clarified how credit providers should manage customers whose accounts have been in persistent debt for 36 months - such as Mr E's account was - and includes the following:*

*"Where the repayment options proposed by a firm are not sustainable for the customer, they will be in a better position if they contact the firm as they are entitled to receive forbearance (potentially including the reduction, waiving, or cancellation of interest and charges).*

*In this instance, Mr E did contact Amex when he learned of Amex's decision to confirm the suspension of his account, but because Amex had taken the decision to suspend his account – which as explained above, I don't consider to be fair or reasonable – Mr E didn't receive the consideration and forbearance that he was entitled to receive, and should have received, from Amex at that time - although it is my understanding that Mr E did subsequently clear the balance outstanding on the account in full.*

*All of which means that my provisional decision here will be that I'm upholding this complaint in Mr E's favour and that my provisional instructions to Amex will be as follows:*

*1. Amex must remove the suspension from Mr E's credit account with immediate effect and restore the account so that it can be used by Mr E without restriction.*

*2. Amex must make a payment of £150 to Mr E to compensate him for the trouble and upset this matter has caused. This payment may not take the form of a credit to Mr E's Amex credit account unless Mr E gives his permission for it to do so.*

In my provisional decision letter, I gave both Mr E and Amex the opportunity to provide any comments or further information they might wish me to consider before I moved to a final decision. Mr C confirmed that he was happy to accept my provisional decision, whereas Amex didn't respond at all.

As such, I see no reason not to issue a final decision and uphold this complaint on the basis outlined in my provisional decision, and I can confirm that my final decision is that I uphold this complaint in Mr E's favour on that basis accordingly.

### **Putting things right**

Amex must remove the suspension from Mr E's credit account with immediate effect and restore the account so that it can be used by Mr E without restriction.

Amex must make a payment of £150 to Mr E to compensate him for the trouble and upset this matter has caused. This payment may not take the form of a credit to Mr E's Amex credit account unless Mr E gives his permission for it to do so.

### **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 E to accept or reject my decision before 2 December 2021.

Paul Cooper  
**Ombudsman**