

## **The complaint**

Ms S is unhappy that American Express Services Europe Limited (AESEL) (“Amex”) suspended his credit card account on the basis of persistent debt.

## **What happened**

In September 2020, Amex wrote to Mr S and explained that because his credit card account had been identified as being in persistent debt for 36 months that they would be suspending the account and increasing the monthly payments due on the account so that the remaining account balance would be cleared faster and would incur less interest than would be the case at the rate that Mr S was currently paying. Mr S wasn’t happy about this, so he raised a complaint.

Amex looked at Mr S’s complaint, but they felt that their actions were consistent with guidance published by the Financial Conduct Authority (“FCA”) in regard to accounts identified as being in persistent debt, and so they didn’t uphold Mr S’s complaint.

Mr S 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 Amex’s actions were in line with FCA guidance on this matter, and so they also didn’t uphold this complaint.

Mr S 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 that account 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 but making little progress towards reducing the 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 S, and while Mr S did increase his monthly payments, these increased payments weren't sufficiently greater such that Mr S's account no longer met the definition of being in persistent debt. And because of this, Amex suspended Mr S's account and advised Mr S 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 on circumstances such as these, and the FCA made specific reference to how a business should treat persistent debt 36-month ("PD36") customers - such as Mr S is in this instance - and also provided clarification on when a credit provider should suspend a customer account, and when such an account suspension isn't warranted.*

*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."*

*But in this instance Mr S did respond to the repayment options proposed by Amex within their earlier persistent debt communication, and he did increase the level of his monthly payments as a result of this. As such, I'm satisfied that clause (a) above doesn't apply here.*

*Additionally, it's clear that Mr S didn't confirm to Amex that the increased repayment options were affordable for him but that he wouldn't make those payments, and again this is evident from the fact that Mr S did make increased monthly repayments in*

*response to earlier communication from Amex about persistent debt. And this means that I'm satisfied that clause (b) doesn't apply here also.*

*Amex have stated to this service that their decision to suspend Mr S's account was objectively justified to Mr S and was undertaken pursuant to a term in the account terms and conditions which permits the suspension of accounts.*

*But I find it difficult to confirm Amex's reasoning here, especially given that all the communication issued to Mr S regarding his account suspension appears to confirm that the suspension of the account was undertaken on the basis that it was a requirement given the ongoing status of Mr S's account as being in persistent debt – which as per the FCA statement above, can't be considered as being an objective justification in this instance, given that I'm satisfied that clauses (a) and (b) of that statement don't apply here.*

*Furthermore, it also must be noted that the higher payments that Mr S was making were reducing the balance of the account, which had reduced from approximately £3,550 in November 2019 – when Mr S first increased the monthly payments – down to approximately £2,650 by February 2021. As such, I'd find it difficult to accept that Amex were reasonably concerned that Mr S was demonstrating behaviour that might lead them to consider that Mr S might struggle to be able to repay the balance of the credit account over time.*

*All of which means that I don't feel that Amex's actions here in suspending Mr S's account in the manner that they did on the basis of the account being in persistent debt can be considered as being fair towards Mr S, and it follows from this that my provisional decision here will be that I am provisionally upholding this complaint in Mr S's favour.*

*My instructions to Amex, should this provisional decision be confirmed as final, will currently be as follows:*

*1. Amex must remove the suspension and all restrictions from Mr S's account with immediate effect so that Mr S can continue to use the account and can continue to make reasonable payments to reduce the balance of the account as he was doing before the account suspension, to take the account out of the status of being in persistent debt over time.*

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

In my provisional decision letter, I gave both Mr S 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 S confirmed that he had nothing further to add, whereas Amex didn't respond at all.

As such, I see no reason not to issue a final decision upholding this complaint in Mr S's favour on the basis explained above, and I can confirm that my final decision will be that I am upholding this complaint accordingly.

### **Putting things right**

Amex must remove the suspension and all restrictions from Mr S's account with immediate effect so that Mr S can continue to use the account and can continue to make reasonable

payments to reduce the balance of the account as he was doing before the account suspension, to take the account out of the status of being in persistent debt over time.

Amex must make a payment of £150 to Mr S to compensate him from the trouble and upset this matter has caused. This payment may not take the form of a credit to Mr S's Amex account unless Mr S 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 (AESEL) on the basis explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 2 December 2021.

Paul Cooper  
**Ombudsman**