

The complaint

Mr B complains that American Express Services Europe Limited (AESEL) froze his personal credit card account and recorded adverse information at credit reference agencies.

What happened

Mr B says his card was frozen when a restriction was placed on a charge card for his limited company. He says that it is a separate legal entity and freezing his personal account led to him being treated as if in default when his company borrowing defaulted in January 2020.

The accounts were merged. The personal account was passed to debt collectors and then a third party. He wants to be compensated for the impact on his personal credit file and the stress caused to him. He says that Amex hasn't provided important information about his complaint as part of a subject access request.

Amex said it hadn't made a mistake. The liability for the borrowing on both the company and personal accounts lay with Mr B. When he reported he couldn't make payments to the company account in line with its terms and conditions it cancelled both accounts. It deemed Mr B a risk and potentially not able to pay the monies back. It ended the agreement in line with its terms and conditions as it said it had "*reasonable grounds to believe you're unable or unwilling to pay your debts when due*".

Our investigator didn't recommend that the complaint be upheld. She said that Mr B's personal account was cancelled in line with the terms and conditions of the account. He was jointly responsible for the company borrowing and this wasn't repaid. And in March 2020 Amex told Mr B that the full balance on the personal account of some £2,354 was due and immediately payable. It was transferred to an outside agency. And as payments had been missed she understood a default was applied. She noted that Amex had told Mr B in February 2020 that he'd need to provide identification for a subject access request. Amex said it had responded to this in March 2020 after he had given this. She didn't consider that compensation was appropriate.

Mr B didn't agree. He said that his account has been closed unlawfully and his credit file damaged. He saw his personal account as a separate one as his company is a distinct legal entity. He said that there was little point in operating a separate company if there was no protection for him. The account shouldn't have been frozen in November 2019. And this affected his ability to keep up with his personal borrowing. He wanted the period between November 2019 and February 2020 to be considered too.

my provisional decision

I issued a provisional decision on 14 February 2022. I set out below what I said.

Through our investigator I asked Mr B whether he could provide a copy of his personal credit file showing how this borrowing had been recorded and about whether it was paid off now. And for any other updates.

Mr B in response said that he didn't have a record for that period. He said that the personal borrowing was repaid by March 2021 as agreed and his personal account was marked as 'partially satisfied'. He said that the company borrowing had been marked as defaulted, but he didn't say that this is what had happened to his personal borrowing. Mr B explained that when he rented a flat he needed a family member to act as a guarantor which caused distress and affected his health and wellbeing. He explained that although he had now had some information about his calls to Amex these are redacted and not complete.

I explained I was looking at Mr B's personal complaint separately from the one about his company. I would deal with the points he makes on its behalf when I considered that complaint and I saw the issue about the calls as most relevant there. But there are overlaps which I would refer to.

There is also some conflicting information about when his account was frozen. And I wanted to start by setting out what he says happened as far as his personal account is concerned:

November 2019: due to the restriction on his company account he says that his personal account was frozen.

January 2020: Amex refers the account to a collection agency.

February 2020: Mr B agrees a payment plan at £214 per month on the full balance.

March 2020: Amex writes and says that the account is being cancelled again and referred to a different third party. The payment plan is cancelled by Amex after one payment. The new owner of the debt writes about payment options. A settlement figure is agreed with payments over 12 months.

April 2020: a payment is made on the account and payments were maintained.

I'd looked at the information Amex had provided about his account. I could see from a statement issued on 13 January 2020 the account was reported as being 30 days overdue by £93. A minimum payment of £198 was due by 7 February 2020. I could also see that on the next statement it stated that the account had been cancelled and referred to a collections' agency and that the full balance was due. That statement showed that on 25 February 2020 Mr B had paid the £214 as he says he agreed to.

I'd also reviewed the terms and conditions of the company account where these may be relevant to Mr B. Notably these state that:

"For the American Express business card the business is jointly and severally liable with you to pay to us when due all charges on the account made by you and any supplementary cardmember. This means that we can demand payment of the entire balance owing on an American Express business card from you or the business."

my assessment

Amex decided to limit the company borrowing on 10 November 2019 and I'd looked at the merits of that separately. I found Mr B's description of what happened on his personal account to be reliable

I appreciated that Amex clearly associated the company borrowing with him. And while from what I could see any demands on that borrowing were addressed to the company, when there were subsequent missed payments relating to a significant balance I thought Amex could be concerned about Mr B's ability to repay his personal borrowing. Having said that the company was a separate legal entity and not in my view as implied in the condition above the same as Mr B – that condition to me is more relevant if for example he'd been a sole trader.

So, I didn't think on what I'd been provided with it was reasonable for Mr B's personal account to be suspended in November 2019. And as I'd set out above the account was overdue by January 2020 but only by 30 days. I'd have expected Amex to discuss any personal payment issues with him and take into account his personal financial position. I considered that there were then potential grounds to be concerned about the account and to restrict its use. In my view Mr B came up with a reasonable payment plan for this personal borrowing: it seems that the payments he was offering and started to make were in excess of what any minimum payment would have been. I was struggling to see why it was necessary to tell Mr B that all the borrowing was immediately due. And not to leave this arrangement in place.

The debt was assigned to a third party along with the company borrowing. Amex was able to assign it in line with its terms and conditions. Mr B could if he wanted have offered to continue to repay all the personal borrowing. On his evidence he made an agreement to come to a partial settlement. I appreciated that he considers that what happened with his company would have affected his ability to pay. As I say I'd looked at that separately, but I need to say here that I didn't find that such impact arose from any error by Amex.

So, if as I understood it the result is that his personal credit record shows a missed payment and a partial settlement of this personal borrowing then I didn't think that's an unfair result.

There shouldn't have been a personal default for this personal borrowing. If he is unhappy with the way the third party had since dealt with his borrowing he would need to take that up with it. His connection to the company as a director and so to any related adverse company information is also something I didn't have a basis to find is unfair. Mr B has explained he took advice from a professional about how to deal with this.

putting things right

I needed to think about the personal impact here on Mr B. Having done so I considered that he should be compensated for the actions of Amex I'd described above which I didn't think were positive and sympathetic and as I'd set out above seemed premature and not relating to his personal financial position. And so, I said I intended to require it to pay him £400 for the distress and inconvenience caused. I invited either Mr B or Amex to clarify the position regarding any credit reference agency reporting about the personal borrowing with suitable evidence if my understanding isn't correct as I hadn't seen the actual records. I appreciated that given what's happened Mr B will still be disappointed by my conclusion.

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.

Amex said it didn't have any further comments to make.

Mr B said that while he was unable to clarify the position regarding any credit reference agency reporting the ramifications of the situation have been severe. He asked that I consider increasing the compensation to £500. Mr B said that the outcome of the process is incredibly disappointing, but he understood the reasoning and truly believed that if he had more complete records of the impact at the time the outcome would be dramatically different.

I've reviewed what Mr B said. I can only reasonably make my assessment here supported by evidence and I've taken into account what has been made available and had indicated what would have assisted me. I don't have anything new to look at. So, while I understand Mr B's position, what he has been able to say hasn't affected my assessment of his complaint. And what he's said about compensation and his request for an increase has I'm afraid not changed my mind about that either. I remain of the view that £400 is fair.

My final decision

My decision is that I uphold this complaint in part, and I require American Express Services Europe Limited (AESEL) to pay Mr B £400.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 April 2022.

Michael Crewe
Ombudsman