

The complaint

Mr M complains that American Express Services Europe Limited (AESEL) lent to him irresponsibly.

What happened

In July 2019, Mr M applied for and received, a credit card from AESEL. It initially had a credit limit of £3,000. According to his credit file, this limit has varied over the intervening period reaching £10,000 in May 2020 and gradually reducing back to £3,000 by November 2021. Mr M says he could never afford to repay the credit given to him. He complained to AESEL saying if it had done proper checks on his application, it ought to have refused to lend to him.

AESEL looked into his complaint and rejected it. It said it had *“performed essential application checks”* and had *“been unable to establish an error on our part”*. AESEL said Mr M could refer his complaint to our service.

Mr M was unhappy with AESEL’s response and referred his complaint to us. One of our investigators looked into it. He felt AESEL should have refused to lend to Mr M and explained why to both parties. He told AESEL how he felt it should put things right.

Mr M accepted what our investigator said, but AESEL didn’t respond. As there was no agreement, the complaint has been passed to me for a 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.

We’ve set out our approach to complaints about unaffordable lending on our website – including the key relevant rules, guidance, good industry practice and law. I’ve considered this approach when deciding this complaint.

AESEL needed to carry out reasonable and proportionate checks to ensure that it didn’t lend to Mr M irresponsibly. I think there are key questions I need to consider in order to decide what is fair and reasonable in the circumstances of this complaint:

- Did AESEL carry out reasonable and proportionate checks to satisfy itself that Mr M was in a position to sustainably repay the credit?
- If not, what would reasonable and proportionate checks have shown at the time and did AESEL make a fair lending decision?
- Did AESEL act unfairly or unreasonably towards Mr M in some other way?

There is no set list of checks AESEL had to do, but it could take into account several different things such as the amount of credit, Mr M’s financial situation and credit history.

Did AESEL carry out reasonable and proportionate checks to satisfy itself that Mr M was in a position to sustainably repay the credit?

AESEL had to satisfy itself that Mr M would be able to repay the credit sustainably. That is, he should be able to make the payments without undue difficulty, while being able to meet other commitments and without having to borrow further. It's not about the likelihood of AESEL being repaid, but it had to consider the impact of the repayments on Mr M.

AESEL said it "*performed essential application checks*" which included checking Mr M's credit file. But it has provided no evidence of the checks it says it did, or any detail of what it found. Our investigator requested this information prior to reaching his view of the complaint and referred to the lack of information from AESEL in his letter giving his answer on the complaint. I've seen nothing which suggests AESEL asked Mr M any questions about his income and expenditure or any further questions regarding what it found as part of the review of his credit file.

Mr M has provided a copy of his credit file – albeit more recent than his application but showing some detail from the time. This shows he had high-cost guarantor loans and was using home credit for a sustained period of time, as well as more 'mainstream' credit. While the payments were being met, I'd have expected a mainstream lender like AESEL to have thought carefully about lending new money to someone using facilities such as these which are generally aimed at consumers who struggle to obtain finance elsewhere.

I think the presence of such high-cost credit ought to have alerted AESEL to the fact that Mr M's finances might not be under control, and he may not be able to sustain an increase in his indebtedness. I think it ought to have asked more questions of him to ensure he could sustainably meet the repayments required. It follows that I don't think AESEL carried out reasonable and proportionate checks in this instance.

What would reasonable and proportionate checks have shown at the time and did AESEL make a fair lending decision?

I've outlined above some of the circumstances which I think ought to have led AESEL to carry out further checks on Mr M's finances. I think it would have been reasonable for AESEL to get a detailed understanding of Mr M's income and expenditure, for example by asking to see several months of his bank statements.

Mr M has provided us with copies of his bank statements for the period shortly before his application for the card. These show he was fully using his overdraft of £3,000 which was in excess of his monthly income. It's evident he was regularly spending more money than he had coming in and there were numerous gambling transactions - something which Mr M has described as "*a gambling problem*".

Having reviewed the information from his credit file and bank statements, it appears to me that Mr M was in financial difficulty and simply increasing his indebtedness was unlikely to help his situation. It seems Mr M was already borrowing to meet his credit commitments so the credit he had already was unsustainable for him. It follows that I think the further credit advanced by AESEL would be unsustainable too, so I don't think it reached a fair decision to lend to him.

Did AESEL act unfairly or unreasonably towards Mr M in some other way?

I've carefully read, listened to and thought about all the evidence provided by each party to this complaint. Having done so, I don't think AESEL has acted unfairly or unreasonably towards Mr M in some other way.

But I do think AESEL should have refused to lend to Mr M, so I am upholding his complaint.

Putting things right

When I find that a business has done something wrong, I'd normally direct that business to put the complainant in the position they would be in now if the mistake it made hadn't happened, as far as is reasonably practical. In this case, that would mean putting Mr M in the position he would be in now if he hadn't been given the credit card. But Mr M was given the card and used the money so it's right he should repay what he borrowed. But I don't think AESEL should benefit from its decision to lend him the money.

So, I think AESEL should:

1. Refund all of the interest and charges Mr M has paid to date.
2. If the borrowing is still in place, AESEL should reduce the outstanding capital balance by the amount calculated above.
3. If, an outstanding capital balance remains, AESEL should ensure it isn't subject to any historic or future interest and/or charges, and an affordable and sustainable repayment arrangement should be agreed with Mr M. But if Step 2 leads to a positive balance, the amount in question should be given back to Mr M and 8% simple interest* should be added to the surplus.
4. Remove any negative information recorded on Mr M's credit file regarding this credit card account. If there is an outstanding balance to pay, AESEL should ensure future reporting is in line with the agreement it reaches with Mr M in step 3.

I remind AESEL of its obligation to treat customers in financial difficulties fairly.

*If AESEL considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give him a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

My final decision is that I uphold Mr M's complaint. American Express Services Europe Limited should put matters right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 3 January 2023.

Richard Hale
Ombudsman