

The complaint

Mr P complains that American Express Services Europe Limited (AESEL) trading American Express (Amex) didn't treat him fairly when he was in financial difficulty.

What happened

Mr P has an Amex credit card – held since 2003. On the statement sent on 28 April 2021, the balance was £4,992.49 and the limit was £5,000. The minimum payment needed was £184 – by 23 May 2021. Mr P was in financial difficulty and had lost his job due to the pandemic. On 24 May 2021, he called Amex and said he couldn't afford to pay the whole amount. He'd paid £120.01. He asked for help. On the same day Amex blocked his credit card and sent him a default notice. There was a further call on 25 May 2021. In August 2021, Amex increased the interest rate on Mr P's card from 22.2% APR to 26.1% APR.

Mr P complained. Amex had increased his minimum payments to £184 in July 2019 – from £125 – and this was causing him financial difficulty. He had lost his job due to the pandemic and was struggling to make ends meet. He asked for financial support from Amex and he said he didn't get it. And they then blocked his card – which meant he was embarrassed when trying to pay for food in a supermarket that evening. And Amex then sent him a default notice threatening legal action – which was uncalled for, particularly in view of his long relationship with Amex. He said he hadn't missed a payment in 19 years. And he only underpaid in May 2021 by £60, so he hadn't been treated reasonably. And then – Amex increased the interest rates on his card which he said was also unfair.

Amex said Mr P's complaint about increasing his minimum payments was out of time under the Financial Conduct Authority's (FCA) rules for dealing with complaints. On Mr P's other complaints, Amex said they could change interest rates in line with their terms and conditions – and the increases applied to all cardholders. Mr P could have opted out, by cancelling his card, but didn't. On Mr P's financial difficulties, Amex said that their Financial Difficulties Team had spoken to Mr P on 24 May 2021, and completed an income & expenditure form and decided that their 'Regain' programme was the best option for Mr P.

This involved a suspension of interest and charges but would also mean a marker on Mr P's credit file. Amex said that was the best option for Mr P – even though he didn't go ahead with it. There had been some confusion on the call about the blocking of the card – and for this they paid compensation of £50.

Mr P brought his complaint to us. Our investigator agreed that Mr P's complaint about the increase in minimum payments was out of time – as it had been more than six months since Amex had issued their final response. On the increase in interest rates, Amex could do that as part of their terms and conditions. On Mr P's calls with Amex on 24 May 2021 – she felt that Amex had offered Mr P an appropriate level of help, but there was some confusion over the blocking of the card. And on the follow up call on 25 May 2021, she felt that Amex's call handler wasn't empathetic to Mr P's situation and talked over him – and she didn't listen to the points he was making. She believed the compensation should be £150 – an additional £100.

Mr P didn't agree and asked that his complaint be looked at by an ombudsman.

I reached a provisional decision where I said:

Under our rules, we can't look at Mr P's complaint about the increases in his minimum payments – as he brought his complaint to us more than six months after Amex's final response about that. We advised Mr P of this at the start of our investigation.

There are two aspects to his complaint which we can look at: the increase in interest rates on his card in August 2021; and the support given by Amex in May 2021 when he told them he was financial difficulty.

On the first complaint – about the increase in interest rates, I can see that Amex wrote to Mr P (and all cardholders) in June 2021 to say the increase would take place in August 2021. This said that the increase could be avoided if Mr P cancelled (and repaid) his card. So – he was given 60 days to do that if he wished. There's no doubt that Amex could change the interest rates on the account – that's in their terms and conditions, and they did give Mr P 60 days' notice, as they were required to do in the terms and conditions. And it was for all cardholders of that card, not just for Mr P And – the increase was a commercial decision that Amex took. So, we can't interfere with that. I accept that Mr P argues that he could not repay his card debt and had no option but to stay with Amex – but I'm afraid we can't say that Amex acted unfairly in increasing the interest rates.

I've then considered how Mr P was treated when he contacted Amex on 24 May 2021. He was struggling and had lost his job due to the pandemic. He need help – as he knew he couldn't make to minimum payment needed (£184) for that month. It was needed by 23 May 2021. I can see that by the time he called Amex – he had paid in £120.11. I can also see that in the previous four months (January 2021 to April 2021, Mr P had paid more than the minimum needed. He told us (and Amex on the call) that he had never missed a payment in 19 years. He was clearly trying his best to do the right thing and be open about his circumstances with Amex.

So – in this context, I listened to the call with Amex on 24 May 2021. It was with Amex's financial difficulties team. I found Amex's call handler to be empathetic, patient, and professional. Mr P said he couldn't make the full payment for May 2021. Amex's call handler completed an income and expenditure form – which showed Mr P had monthly income of £1,053 and outgoings of £3,160. She offered Mr P Amex's 'regain' plan which would result in lower monthly payments, and zero interest and charges; the card would be stopped; and the arrangement would be notified to the credit reference agencies (CRAs) and be run by a third party company. He would be sent a default notice as part of 'regain'.

Mr P said clearly that he didn't agree to that – he was concerned about the effect on his credit file and the involvement of a third-party company. He asked to be sent details by email and said he would consider it. A call was arranged for the following day. But for me, it was clear that Mr P wouldn't accept the solution Amex were proposing. Mr P said to Amex on the call (and in his complaint to us) that his other creditors were charging no interest, with no impact on his credit file. I don't have specific knowledge of Mr P's other arrangements and can't comment on them – but in general terms, I would be surprised if that were the case. I say that because 'payment plans' such as Amex's 'regain' plan are normally noted on customers' credit files. But - I think that given Mr P's financial situation, the 'regain' programme was an appropriate way forward for Mr P – so I can't say Amex were wrong to propose it.

However, I don't think the call ended clearly, and this is where Amex didn't act reasonably in my view. Amex had said that the 'regain' plan's contents (cancelling the card; reduced payments; zero interest and charges; notification to CRAs; default notice) would take place if Mr P accepted the 'regain' plan. But Mr P said he didn't want the 'regain' plan. And he said "do not cancel the card" two or three times. The call handler said she would not cancel the card. She said, *"do not worry, we will not cancel the card as you are not agreeing to regain at the moment."* But she then said Amex would send a default notice - which she said could be ignored.

What happened then – was that Mr P went shopping at a supermarket – he said to buy food for the family for that evening's meal. The card was declined as it had been stopped. This was contrary to what the call handler had told Mr P – and it must have been very embarrassing for Mr P to have been declined at the checkout. So – Amex were at fault here.

Turning to the default notice. I accept that Mr P had told Amex he couldn't pay the £184 for May 2021. And the call handler told Mr P that a default notice would be sent. But equally, Amex also said it would only be sent as part of the 'regain' package – which Mr P had not agreed to. And a call had been arranged for the following day – by when Mr P would have considered the details of the 'regain' package. On balance, I think Mr P was entitled to think that nothing would happen until he's considered what Amex had told him and had the follow-up call. So – I don't think it was reasonable to send Mr P the default notice.

The default notice was dated 24 May 2021 and it said *"We have reasonable grounds to consider that you are no longer creditworthy and that you will be unable or unwilling to make your contractual payments when due...this ...is our final demand for payment. Your American Express card will be cancelled in 14 calendar days of the date of this notice....we may take legal proceedings against you for the outstanding balance...your account may be referred to a debt collection agency....information regarding the status of the account may be reported to a credit reference agency where it will remain on record for 6 years...."*

I accept that Mr P hadn't made the full payment of £184 by 23 May 2021 – but he had paid £120.01 (£64.99 short) and he says he'd not missed a full payment for 19 years – which I also accept. I saw that for four months previously, he paid more than the monthly minimum. I accept that Amex were entitled to send him a default notice because of the underpayment. But while Amex has followed their processes here, strictly following a procedure or process can lead to an unfair outcome for a customer in the individual circumstances of their situation. I think that's what's happened here. I can see that the default letter caused Mr P a lot of stress and worry – and I think it would've been reasonable for Amex to have waited for the call the following day (as arranged) to consider their position in the light of what Mr P then told them about whether he accepted the Regain plan or not; or send a letter (not a default notice) stating that the full payment had not been made, and to make it up the next month. Given how open Mr P had been with Amex about his situation – and that he was still considering what Amex had told him about the regain plan – I think that would have been a fairer and more reasonable way forward.

On the call (the next day as arranged) on 25 May 2021 – Amex's call handler told Mr P that the default notice and letter stopping his card had been emailed to him. On the call, Mr P confirmed to hadn't been emailed to him, not had he been advised by email of the stopping of his card. Mr P told us that the default notice wasn't received (by second class post) until after the expiry of the 14-day period – and I can see that this also added to his anxiety.

We asked Amex about whether a default or any kind of marker was added to Mr P's credit file at the time – and they confirmed nothing had been notified to the CRAs.

I've then considered an appropriate amount of compensation for what happened. Our service had set down criteria by which to consider awards. In this case, I can see that the default notice, and the error that Amex made in cancelling Mr P's card caused him considerable stress and inconvenience. That comes across in his correspondence, and in the calls I listened to. And so, I think that compensation of £250 is appropriate here – of which Amex has already paid £50.

Responses to the provisional decision:

Mr P made the point that he felt that £200 was low for what Amex had put him through. But he accepted the provisional decision. Amex accepted it also.

I now need to make 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.

Because both Mr P and Amex accepted my findings, I won't be departing from the provisional decision.

My final decision

I uphold this complaint. American Express Services Europe Limited (AESEL) trading as American Express must:

- Pay compensation of £200 to Mr P for distress and inconvenience. This is in addition to the £50 already paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 1 June 2022.

Martin Lord
Ombudsman