

## The complaint

Miss G complains American Express Services Europe Limited didn't treat her fairly when she had difficulties making repayments to her credit card account.

## What happened

Miss G had a credit card account with American Express. In January and February 2018 Miss G didn't make the contractual payments. Then in March 2018 a number of transactions were made which she told American Express she hadn't authorised. American Express investigated these transactions and explained it would not be crediting her account with the disputed transactions.

During the same period Miss G was sent another statement, detailing the minimum payment required. Within this statement was an '*arrears notice*' which explained that payments had been missed. Miss G was also sent a '*notice of default sums*' which stated that repayments had been missed and the credit limit exceeded.

In late April 2018 Miss G was sent a '*final demand and notice of termination*' letter. This letter confirmed the account was being terminated and the outstanding balance was due within 28 days of the letter. Miss G made a payment of £1,000 towards the balance at the end of May 2018. American Express says that it was at this time Miss G entered into an arrangement to pay.

Miss G was sent further statements in June, July, August and September. No further payments were made by Miss G during this time, and in November 2018 American Express registered a default on Miss G's credit file for the account.

In July 2019 Miss G raised a further complaint about the disputed transactions from March 2018. American Express issued a final response letter rejecting her complaint at this time

In July 2021 Miss G applied for credit with another lender. During this process she discovered the registered default applied by American Express. Miss G raised a formal complaint with American Express at this time explaining:

- The default had been applied unfairly by American Express. It has not adhered to pre-action protocol in respect of debt recovery. The default also does not accurately reflect what happened in 2018.
- American Express didn't fairly consider the disputed transactions. The outstanding balance mainly consists of transactions which were fraudulently made.
- She was unaware the default even existed until August 2021, and she thought the disputed transactions had been cleared from her account.
- The statements and letters sent by American Express were not received. Miss G says she asked American Express to amend her address, but this was not done.

American Express investigated her complaint about registration of the default and explained:

- The disputed transactions had been investigated and Miss G was informed of its decision not to refund the transactions in its final response letter issued to her in July 2019.
- It had notified Miss G of the cancellation of her card and the referral to a debt collection agency in April 2018. Miss G was also informed of the potential for a default to be registered.
- To assist Miss G she entered into an arrangement to pay through a collection agency. Miss G made one payment towards this of £1,000 in May 2018 and hereafter monthly payments were of £700 were due. The collection agency contacted Miss G for a monthly payment in June 2018, but Miss G was unable to make this, so the arrangement ended.
- As part of its duty as a responsible lender it must pass on information to credit agencies. It would not be asking for the default to be removed.
- It had acted in accordance with the account terms and conditions when it cancelled Miss G's card.

Miss G was not happy with American Express's review of her case so referred her complaint to this service. The investigator looked into the merits of this case and found American Express had acted fairly in its handling of her account and applying the default.

Miss G remained unhappy, so the case has been referred to me – 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.

For clarity, I'll start by saying that this decision will focus on whether American Express has acted fairly and reasonably in respect of Miss G's complaint about it registering the default here. Miss G's case regarding the disputed transactions has been reviewed separately by this service.

There's a great deal of correspondence on this complaint and many complaint points have been raised. I will, however, focus on issues which are relevant for me to reach a fair and reasonable outcome in the circumstances of this complaint. This isn't meant as a discourtesy. It simply reflects the informal nature of our service. But I'd like to reassure Miss G that I've considered all she's told us and provided us, as I have with American Express' submissions too.

I'm sorry to hear of Miss G's experience over the past few years with her personal situation. I understand that having a default on her credit file will impact on her ability to obtain further credit in the future. Miss G says American Express has acted unfairly. Based on the evidence I have, I don't think it did. I'll explain why.

When an account is in arrears, a lender can register a default, even if an arrangement to pay or some other temporary arrangement has been agreed. The Consumer Credit Act 1974 says that a lender must issue a notice of default setting out what the consumer needs to do

to bring the account back up to date and tell the customer the date by which this needs to happen. In this case, the arrears accrued because Miss G didn't make the contractual payments.

I can see that from January 2018 onwards Miss G hasn't made the minimum payments due on her American Express credit card. I've looked at the correspondence sent to Miss G and I can see the credit card statements set out the minimum payment required and when the payment needed to be made by. Miss G was also sent a notice of sum in arrears, and a notice of default when further payments weren't received, and it had no other contact from Miss G around payments.

A key issue is Miss G's point that she did not receive much of the correspondence sent to her by American Express. Miss G says she wrote to American Express on two separate occasions – in March 2018 and June 2019 asking for her correspondence details to be changed. American Express says it never received these requests. I can see the point regarding postal issues she says she had at the time has been dealt with in some detail under Miss G's case concerning the disputed transactions. The evidence I've seen suggests that up until at least September 2019 Miss G was residing at, or at least had access to the address which American Express was using to contact her. In addition, although Miss G says she didn't receive the letters sent to her, it does seem she was in touch via telephone with the collection agency that was handling the debt for American Express. Miss G therefore had an awareness of the situation, and the fact she had entered into an arrangement to pay.

Miss G says the disputed transactions made up much of her outstanding balance. I can see there was an error with one of the reversed disputed transactions. American Express acknowledged this error and offered a £25 payment in recognition of this mistake. However, the transactions remained on Miss G's account following this and Miss G was sent a final response letter explaining that American Express did not have enough evidence to consider them to be fraudulent. I understand Miss G says she was unaware of the balance and state of her account, but on balance, considering the evidence I have seen, I think Miss G would've had some awareness that she had an outstanding debt with American Express. I think it's also significant that even prior to the transactions Miss G has disputed, Miss G did not make the minimum repayments for January and February 2018.

Although no payments were made towards Miss G's account from February 2018, I can see a payment of £1,000 was made in May 2018. American Express has provided evidence to show an arrangement was agreed with Miss G at this time with a collection agency. Miss G was due to make another payment of £700 in June 2018, however this wasn't made, and the arrangement ended. The information from the collection agency indicates they spoke to Miss G at this time and tried to set up another plan in both July and August 2018, but this wasn't possible as Miss G didn't provide further payment details. This information shows that there was some form of contact between Miss G and the collection agency used by American Express to discuss her situation and put in place a plan to manage the debt.

American Express issued its default notice in April 2018, but the default was only applied to Miss G's record in November 2018. It seems in this interim period American Express provided Miss G with an opportunity to repay the debt. However, beyond the payment of £1,000, the remaining monthly payments towards the arrangement weren't made by Miss G. Given the circumstances, and the information that was given to Miss G by the collection agency, I think it was reasonable for American Express to register the default. I say this because American Express had taken steps to assist Miss G, but as no progress was being made it took the decision to accurately report the state of Miss G's account.

It is clear Miss G is keen to remove the adverse information that is recorded on her credit file. Ultimately Miss G didn't make her contractual repayments in the months leading up to the account closure. American Express is obliged to accurately report the status of Miss G's account. I'm therefore not going to require American Express to change the information it recorded. I know Miss G will be disappointed with the outcome I've reached on her complaint. But this final decision ends what our service can do for her. However, she can reject my decision and pursue the matter elsewhere if she wishes to do so.

### **My final decision**

My final decision is that I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss G to accept or reject my decision before 5 October 2022.

Chandni Green  
**Ombudsman**