

## **The complaint**

Mr M is unhappy that American Express Services Europe Limited (AESEL) ("AmEx") reported adverse information to his credit file.

## **What happened**

Mr M had an AmEx charge card which he used regularly and to which he made regularly monthly payments without incident. In March 2020, Mr M didn't make the full payment that was due on his AmEx account because of the financial impact of Covid-19, which was emerging globally at that time.

Mr M contacted AmEx in April 2020, and arranged for a payment holiday to be put in place on his charge card account. However, Mr M later noticed that AmEx were reporting a late payment and continuing arrears on his account to the credit reference agencies. Mr M wasn't happy about this, so he raised a complaint.

AmEx looked at Mr M's complaint, but they noted that the late payment marker referred to the payment that Mr M had missed on the account before he'd contacted AmEx and arranged the payment holiday, and so they didn't feel that they were acting unfairly towards Mr M by reporting the continuing arrears on the account that they were.

Mr M 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 didn't feel that AmEx were acting unfairly towards Mr M, and so they also didn't uphold Mr M's complaint.

Mr M 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 20 June 2022, as follows:

*In April 2020, the Financial Conduct Authority ("FCA") published temporary guidance regarding the provision of three-month payment holidays to eligible consumers who were experiencing difficulty meeting the payments due on their credit accounts because of financial difficulties brought about by the impact of Covid-19. The FCA guidance included that, for these three-month payment holidays only, the reporting of these payment holidays to the credit reference agencies would be suspended, so that an eligible consumer who benefited from such a payment holiday didn't have their credit file impacted by doing so.*

*In this instance, when Mr M contacted AmEx in April 2020, he'd already missed a payment on his account, only making a partial payment of £1,000 rather than the full*

*outstanding payment of over £3,000 that was due to be paid that month, as per the terms of the charge card account.*

*That meant that Mr M already had arrears on his account before he was granted the FCA prescribed payment holiday by AmEx, and so I can understand why AmEx continued to report those arrears, given that they were in place before the payment holiday started.*

*But, while I don't feel that AmEx have technically done anything wrong here, I feel that the spirit and purpose of the FCA guidance was clear, in that it was designed to protect consumers who had managed their credit commitments without incident up until the onset of Covid-19, but who were in danger of incurring adverse reporting on their credit files solely as a result of the impact of Covid-19.*

*Having considered Mr M's payment history, I feel that he fits the criteria described above. And I say this because it's clear that Mr M did use the charge account regularly and that up until the emergence of Covid-19 he'd been able to make monthly payments in line with the requirements of the charge card account, such that he hadn't incurred any adverse credit file reporting up to that time.*

*Additionally, I'm also satisfied that it was only because of the onset of the Covid-19 pandemic, and the unprecedented effects that the pandemic had on the UK economy and the ability of consumers such as Mr M to meet their ongoing credit commitments, that Mr M wasn't able to continue making the required monthly payments towards the charge card account that he had been making before the pandemic emerged.*

*So, while I don't feel that AmEx can be said to have done anything wrong in how they managed the account, I do feel that in the interests of fairness, and with the purpose of the FCA guidance in mind, that AmEx should retrospectively backdate the start of the FCA prescribed payment holiday that they provided to Mr M to cover March 2020.*

*This would mean that the applied payment holiday would have met the purpose it was designed for. Specifically, to ensure that Mr M didn't incur any adverse reporting on his credit file, where none had existed before, solely because of the impact of Covid-19. And I can confirm that I will be provisionally upholding this complaint in Mr M's favour and provisionally instructing AmEx to amend their credit file reporting on that basis.*

*This would mean that the payment holiday would have covered March, April, and May 2020, and that Mr M would have then been eligible for a further three month payment holiday following that period which would have covered him until the time that he was able to clear the balance outstanding on the charge card account around August 2020. This would have therefore meant that Mr M wouldn't have incurred any adverse reporting on his credit file, and my provisional instruction to AmEx is therefore that they must amend Mr M's credit file reporting to remove all adverse reporting accordingly.*

In my provisional decision letter, I gave both Mr M and AmEx the opportunity to provide any comments or information they might wish me to consider before I moved to a final decision.

AmEx explained that while they understood the reasoning behind my provisional decision, they noted that they hadn't received any notice from Mr M that he'd been in financial difficulty until May 2020, by which time he was already in multiple arrears on his account. AmEx also reiterated their obligation to make accurate reports to the credit reference agencies, which they feel that they've done.

I can appreciate AmEx's position here, and as I've mentioned in my provisional decision letter, I don't feel that they've done anything technically wrong in how they've managed this situation. However, I do feel that the unique circumstances that surrounded the emergence of the Covid-19 pandemic merit a greater degree of leeway in some situations than might usually be the case.

Additionally, while Mr M may not have explained verbally to AmEx that he was experiencing financial difficulties until May 2020, he did attempt to enrol into AmEx's Covid-19 relief payment programme in April 2020 – an action which I feel should be considered as being a de-facto declaration of actual or projected financial difficulty.

Ultimately, it remains my position here that the FCA guidance surrounding three-month payment holidays was intended to prevent exactly what happened here, which was that a consumer who had until that time managed his credit commitments without significant incident found himself struggling to meet his credit commitments because of the unforeseen and unprecedented circumstances surrounding the emergence of Covid-19.

And while I don't feel that AmEx did anything technically wrong here (which is why I'm not instructing any form of compensation payment) I do feel that a fair outcome – in these specific unique circumstances – is that Mr M's credit file shouldn't be adversely affected, especially given that he applied for the very FCA prescribed assistance that was intended to protect him.

All of which means that my final decision is that I'll be upholding this complaint in Mr M's favour on the same basis as outlined in my provisional decision.

### **Putting things right**

AmEx must amend Mr M's credit file to remove all adverse reporting from March 2020 onwards, including the default.

### **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 M to accept or reject my decision before 19 August 2022.

Paul Cooper  
**Ombudsman**