

The complaint

Mr R complains that American Express Services Europe Limited registered a Cifas marker against him without due cause.

What happened

In June 2019 Mr R was approved for a credit card account with American Express. The account required him to repay any outstanding balance in full each month. Shortly after opening the account Mr R used the card to make purchases, charging over £6,500 to the account.

Later in June 2019, American Express noticed that Mr R was making what appeared to be largely business-related transactions in the form of goods from a food and drink wholesalers. They also noted that he had made a payment to his own company in the shop they said he owned, which gave them cause for concern as they thought this company had been dissolved at the time. They conducted a review of his account, and asked him about this payment, his general account spending and to provide evidence that he had the funds to pay them what was due. Mr R explained the transactions were for his wife's business, not his own. American Express say he accepted he did make a payment to her business too.

In August 2019, Mr R spoke to American Express to inform them he was travelling so could not make his payments on time, so would send them £1,000 each week. However, he did not do so. After three months with no payments made towards his account, and no evidence to show how Mr R would be able to repay what he owed, American Express took the decision to close his account, and load him to Cifas for evasion of payment.

Mr R said that in October 2020 his bank accounts were closed and banking facilities terminated so he contacted Cifas, and discovered that American Express had loaded the marker against him. He complained to American Express, who did not think they had made any errors in loading Mr R to Cifas.

Mr R remained dissatisfied, so he came to our service. He complained that, in summary:

- He had disclosed earlier that the card would be used for purchases, and felt the payments in the wholesalers and to his wife's business were with the permission of American Express.
- He never had any intention to defraud any financial organisation.
- He had never used the card in a company that was dissolved – his wife had taken over the shop some years prior to the transaction.
- American Express had branded him a fraudster and refused to correct it, which has led to a detrimental impact on his life and well-being.
- His wife had also had her accounts closed as a result of this.
- He accepts he owes this debt and had been making payments towards it of £500 per month. He intends to clear the debt, but he was unable to continue making payments as he did not have any banking facilities due to the Cifas marker.
- He is of good character and has been a reliable customer to financial institutions for over 30 years.

- He had intended to repay his balance in full but he then had financial problems. At the time, his cash and carry business had closed down, he could not pay for his mortgage and struggled with money. He said he called American Express to set up a direct debit for the repayments and it agreed it would be £500 per month. After some time, he could not afford this so they agreed to reduce the payments to £250 per month.

One of our investigators looked into what had happened and didn't recommend that Mr R's complaint be upheld. This is because they said the evidence of financial difficulties Mr R provided all related to the period after the Cifas marker had been loaded, not the time of the missed payments. And so, given that he had failed to make payments towards his account despite the fact the terms and conditions of the account required him to repay in full each month, the evidential bar for the Cifas marker had been met.

Mr R remained dissatisfied – and so the complaint has come to me to decide.

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.

Having done so, I have reached the same overall conclusion as our investigator, and for broadly the same reasons. I will explain why.

The type of Cifas marker that American Express applied is for 'misuse of facility' for evasion of payment – relating to Mr R utilising credit balance without the means or intention to repay it. In order to file such a marker, American Express are not required to prove beyond reasonable doubt that Mr R is guilty of a fraud or financial crime. But it must show that there are reasonable grounds that amounted to more than mere suspicion or concern. Cifas guidance at the time said:

- *“There must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted; [and]*
- *The evidence must be clear, relevant and rigorous such that the member could confidently report the conduct of the subject to the police.”*

So the relevant finding I need to make is whether I think American Express have sufficient evidence to conclude that Mr R evaded payment, and was deliberately dishonest in doing so, such that they would be able to escalate their concerns to Cifas. I do think American Express were entitled to do so, I'll explain why.

Mr R took out the account which had express terms that said he had to repay the balance in full at the end of each month. Mr R made numerous transactions on his account, and yet failed to make any payments for the first three months – which is when American Express made their decision to refer him to Cifas. He did not make any payments for another two months after this decision either. American Express did write to him to let him know about what he owed, and when he was to pay it. He failed to do so. He was in communication with American Express during this period and although he indicated he would pay £1,000 per week, he did not tell them he was in financial difficulty – and he provided assurances that he would repay the debt and that he was able to do so. He still did not make any payments towards his account. Mr R has not been able to provide any clear evidence to show that he was in financial difficulties at the time of these missed payments such that he could not repay what was owed. So, having considered all of this I do think it was fair and reasonable to register him with Cifas.

I am sorry as I know that this will come as a disappointment to Mr R, and I was sorry to read of the difficulties Mr R has been having as a result of the Cifas marker, but I cannot say that American Express acted outside of the Cifas rules.

My final decision

I do not uphold this complaint and will not require American Express Services Europe Limited to do anything further.

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

Katherine Jones
Ombudsman