

The complaint

Mr D complains that American Express Services Europe Limited (AESEL) irresponsibly increased the credit limit on his credit card on two occasions, when he couldn't afford the repayments.

What happened

Mr D was provided with a credit card by AESEL in June 2017, with an initial credit limit of £15,000. The credit limit was increased in June 2018 to £21,000, then in October 2018 to £24,000. Mr D said that during this period he was gambling uncontrollably, as is evident from a number of large cash payments from his account. He only managed to make the payments by taking out further loans. He said AESEL didn't ask him any questions about his circumstances before increasing the credit limit. He paid off the balance on the card in October 2021 by taking out a further loan.

AESEL said it had carried out all necessary checks before increasing the limit. It says it has seen no evidence of various consolidation loans Mr D said he'd taken out.

On referral to the Financial Ombudsman, our investigator said that as Mr D's indebtedness increased substantially at the time of the increases, the repayments were unlikely to be affordable or sustainable. However she didn't think that from the evidence of Mr D's use of his account, AESEL could have been expected to pick up on his gambling problems.

AESEL didn't agree and the matter was passed to me for further consideration. I asked Mr D to provide evidence of the loans he had taken out, which he has done. I also asked AESEL for evidence of the credit checks it had carried out before the credit limit increases. It couldn't do that, although has provided details of its overall summary of Mr D's risk scores and debt capacity at the time of both increases.

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.

Considering the relevant rules, guidance, and good industry practice, I think the questions I need to consider in deciding what's fair and reasonable in the circumstances of this complaint are:

- Did AESEL complete reasonable and proportionate checks to satisfy itself that AESEL would be able to repay the credit advanced in a sustainable way?
- If not, would those checks have shown that Mr D would have been able to do so?
- Bearing in mind the circumstances at the time of each application, was there a point where AESEL ought reasonably to have realised it was increasing Mr D's indebtedness in a way that was unsustainable or otherwise harmful and so shouldn't have provided further credit?

Mr D was provided with a credit card by AESEL in June 2017. Because of the high credit limit, AESEL should have done thorough checks before offering the card. Mr B was on a high salary and a lot of his indebtedness was on mortgage. Mr B didn't complain about the actual issue of the card to him. However he has complained about the credit limit increases.

first increase

This was in June 2018, although Mr D was notified of it in late April 2018, so I assume that was when any checks were done. AESEL checked Mr D's credit rating and satisfied itself that he was a safe risk to provide an increased credit limit. All we really know are from Mr D's figures which are that he had short term debt of £10,591, credit limits of £33,900, (I presume annual) payments of £30,870, and spending of £7,734. He had taken out a loan with his bank in February 2015 for £7,500 and a further one for £5,000 in March 2018. I'm aware that he took out a loan with a building society in October 2017. Although I'm unaware of the amount, he was paying over £370 a month for this loan.

I think there is insufficient evidence from AESEL about the various accounts and how it assessed the affordability of the credit. From Mr B's bank statements (which he has supplied to us) I can see that around about the time the credit limit was due to be increased, he was substantially overdrawn at his bank. I think on balance that the overdraft would have shown up in any credit search and the account would be shown overdrawn monthly. I think this should have been sufficient to alert AESEL to find out more about Mr D's finances and had it done so it would have shown that he was carrying out very substantial betting transactions, especially in the period leading up to the increase. Whilst he did not do gambling on the card (as I'll set out below) I think this would have been of sufficient concern not to increase the limit further. It was also evident that there were transfers into the account from other credit cards and regular overdraft charges.

I don't think AESEL acted fairly in increasing the limit.

second increase

If the first increase hadn't been applied then it follows that it can't have been fair to provide the second increase. I believe Mr D's short term debt would have gone up to about £16,000 by then. Mr D had provided a figure of £26,000 as at February 2019, but he had taken out a further loan of £16,000 in January 2019.

He was still gambling heavily and in the month or so before the increase he was still running an overdraft. So I don't think AESEL made a fair lending decision in respect of the second increase.

gambling

Mr D says AESEL should have noticed he was using online payment services for substantial cash transactions, and this service facilitates gambling. However it does appear that another cash transaction to a different payment service was queried by AESEL and Mr D explained it was for a purchase. The online service used doesn't just deal with gambling and I think it quite likely that had AESEL queried those payments Mr D wouldn't have disclosed they were for gambling. So I don't think AESEL would have discovered that his cash transactions on the account were used for gambling.

Putting things right

As I don't think AESEL should have increased Mr D's credit limit above £15,000, I don't think it's fair for it to charge any interest or charges on any balances which exceeded that limit.

However, Mr D has had the benefit of all the money he spent on the account so I think he should pay this back. Therefore, AESEL should take the following actions:

- Rework the account removing all interest and charges that have been applied to balances above £15,000.
- If the rework results in a credit balance, this should be refunded to Mr D along with 8% simple interest per year* calculated from the date of each overpayment to the date of settlement. AESEL should also remove any adverse information recorded after 6 June 2018 regarding this account from Mr D's credit file.
- Or, if after the rework the outstanding balance still exceeds £15,000, AESEL should arrange an affordable repayment plan with Mr D for the remaining amount. Once Mr D has cleared the outstanding balance, any adverse information recorded after 6 June 2018 in relation to the account should be removed from his credit file.

*HM Revenue & Customs requires AESEL to deduct tax from any award of interest. It must give Mr D a certificate showing how much tax has been taken off if he/she asks for one. If it intends to apply the refund to reduce an outstanding balance, it must do so after deducting the tax.

My final decision

I uphold the complaint and require American Express Services Europe Limited (AESEL) to provide the remedy set out under "Putting things right" above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 7 November 2022.

Ray Lawley
Ombudsman