

The complaint

Mr G complains that American Express Services Europe Limited (AESEL) trading as American Express (Amex) placed late payment markers on his account and then defaulted it.

What happened

Mr G had an Amex credit card. In March 2020, the balance was £11,139 and the limit was £12,000. Mr G's income was affected by the pandemic. In March 2020, Amex agreed a three-month payment holiday under the FCA's pandemic support scheme. This was extended for a second period of three months in July 2020. No payments were made to the credit card between March 2020 and October 2020 (other than one payment of £214.21 in May 2020). On 7 November 2020, Amex sent Mr G a Notice of Default which asked for payment of £854 within 14 days. The balance was £12,797.05. On 30 November 2020, Amex wrote to Mr G to say that because of his financial difficulties, the interest rate was set to zero and his account was to be passed to a specialist agency. A default was registered. Mr G paid off the account in March 2021.

Mr G complained. He said the late payment markers weren't fair because he was on a payment holiday at the time. And the default was also unfair as he'd not been told about it. And Amex had told him to ignore any regulatory letters or demands for payment. He said he was having trouble getting a mortgage because of the marks on his credit file.

Amex discussed Mr G's complaint with him on the phone and issued a summary resolution letter. Amex's notes of the call said they told Mr G that the late payment markers were correct and the account was correctly terminated. So, they said no changes to his credit file would be made.

Mr G brought his complaint to us. Our investigator said that the late payment markers should be removed because Mr G was in an agreed payment holiday for six months. But that was the maximum allowed and after that time, the payments missed were still owed, and so by October 2020, Mr G was six months in arrears. And so – he said Amex were correct to default his account. Amex had written to Mr G with a Notice of Default - so it was clear what was going to happen.

Mr G disagreed. He said that the payments missed when on a payment holiday shouldn't have been taken into account - so he wasn't six months in arrears. And in the conversations he'd had with Amex, there wasn't any mention of a default. He had been told repeatedly to ignore any warnings. He hadn't received any text messages. Mr G asked that an ombudsman look at his complaint.

I reached a provisional decision where I said:

There are two aspects to Mr G's complaint – the missed payment markers in 2020 and the later default – in November 2020.

Missed payment markers: In April 2020, The Financial Conduct Authority (FCA) announced guidance to lenders in response to the effects on customers of the COVID-19 pandemic. All

lenders, including Amex, had to put in place 'payment holidays' on many credit agreements, including credit cards – to help customers who were affected. Customers could ask for a total of two payment holidays each of three months – whereby payments could be suspended. Missed payments would not be reported to credit reference agencies, although interest would still be debited to the accounts. This support was provided by firms up to the end of October 2020.

Mr G's income was affected by the pandemic and I can see that he was given a payment holiday in March 2020 for three months; and then after that, another one for another three months. So – Amex did what they should have done here. But they then marked Mr G's credit file with late payment markers – which, under the scheme, they shouldn't have done. Mr G didn't make a payment in March 2020 and I see that Amex have argued that this should be shown as a late payment. But equally, Amex haven't shown us any correspondence showing when the payment holiday started, so I will assume it included the March 2020 payment. And so – I agree, the late payment markers should be removed for the period between March 2020 and November 2020.

October/November 2020: Because Mr G had had the maximum payment holidays allowed under the FCA scheme, the other option was for Amex to consider further support which could be used where customers were in longer term financial difficulty.

Here, the relevant guidance is that businesses have an obligation to treat customers in financial difficulty sympathetically and the Financial Conduct Authority (FCA) says that businesses like Amex should treat customers in difficulties with forbearance and due consideration. For example, a business might suspend or waive interest, accept lower payments or defer them and allow customers more time to repay their debt.

Turning to what happened in October 2020 and thereafter. I can see that Mr G hadn't made any payments to his account from March 2020 up to and including November 2020. Amex sent him a Notice of Default on 7 November 2020. This asked for payment of £854 within 14 days. And then on 30 November 2020, Amex wrote to Mr G to say that as he was in financial difficulty they were reducing his interest rate to zero and transferring his account to a 'specialist agency' to manage.

I considered the letter dated 30 November 2020. For Amex to judge Mr G to be in financial difficulty, they would've had to complete an income and expenditure affordability. But I can't see this was done. But even if they had, an option would've been to agree to a payment plan with no repayments (and zero interest) for a period – which would've been consistent with the FCA's guidance - rather than going to a default. But I can't see this was considered. Nor was the letter clear about what the 'specialist agency' would do – it may have been a debt collection agency or a third-party agency to help Mr G in his situation.

Communications between firms and customers should be clear and not misleading – that's also laid down by the FCA. And so - I've reviewed the contact notes on Mr G's file with Amex – and in all honesty, they aren't clear. They say that Mr G's payment holiday was due to end in October 2020. There was contact by phone or by webchat between Mr G and Amex on 27 September 2020, 29 September 2020, 29 October 2020, and 30 October 2020. But the notes don't say what was said or discussed. We asked Amex several questions about what happened and asked to see:

- letters or emails relating to the payment holidays, and what was sent to Mr G when they started and then ended – I wanted to see what Mr G was told about his account then, and what he needed to do. For example, what was he told about bringing his payments up to date.

- Any text messages sent to Mr G. I wanted to see what Mr G was told about his account and what he needed to do.

- Any income & expenditure form completed in October 2020 – to see what Mr G's situation was then. I say this because we would have expected Amex to understand this before deciding to default his account or help him with a payment plan.

- We asked to listen to the calls between Amex and Mr G. Mr G has said he was told to ignore any regulatory letters or demands for payment.

Unfortunately, Amex haven't been able to provide any of this information. And therefore, I must make a provisional decision based on the balance of probability of what happened. And because Amex haven't been able to provide evidence of what they told Mr G – I'm persuaded to accept Mr G's version of events. That is, that he wasn't advised about the potential for default; or about the arrears; and that he was told to ignore regulatory letters or demands for payment.

And therefore – I'm minded to ask Amex to remove the default from Mr G's credit file. Our process is to invite comments from both Mr G and Amex – and if Amex come forward with evidence of the communications with Mr G, I may change my view.

Responses to the provisional decision:

Mr G accepted the removal of the default and late payment markers from his credit file. He also argued that he should get some compensation for:

- the stress and inconvenience caused by what happened.
- He said that because of the effect on his credit file, the price of a new mortgage went up. He showed us that an agreement in principle (AIP) from a high street lender for a rate of 3.09% fixed was declined with the comment "the application had not passed the credit score". So, he said he had to take a mortgage with a rate of 5.04% fixed; and had to contribute another £20,000 as a deposit. So – he says that Amex should pay the increased cost of the mortgage.

Amex had no further information to add. We asked them if they would pay compensation of £200 – and they agreed to that.

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.

I've considered what Mr G has argued and looked at the papers he sent us. For me to decide that Amex should pay the increased costs of his new mortgage, I must be certain that the reason that the high street lender declined the mortgage was entirely due to the marks on Mr G's credit file. But what the lender has said is he failed their 'credit score' – I consider this means that he failed the internal credit score – which would mean a combination of (for example) credit file markers; as well as bank account activity; income multiples; loan to value ratio; and other factors. So – I'm not persuaded that it was solely due to marks on Mr G's credit file that caused the declined mortgage.

But we do accept that in broader terms, Mr G suffered distress and inconvenience. We

proposed to Amex that this should be £200, and Amex agreed.

Therefore, my final decision is as detailed in the provisional decision, but with the added payment of compensation of £200.

My final decision

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

- Remove the late payment markers from Mr G's credit file from March 2020 to November 2020.

- Remove the default from Mr G's credit file.

- Pay compensation of £200 for stress and inconvenience. In responding to this decision, Mr G should advise how he wishes this to be paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 26 December 2022.

Martin Lord
Ombudsman