

The complaint

Miss S complains that American Express Services Europe Limited irresponsibly agreed to provide her with a credit card and then subsequently increased the credit limit which was unaffordable for her.

What happened

In June 2016 Miss S applied online for a credit card account with American Express. She declared that she had an annual income of £42,000. American Express approved her application and she was provided with a credit limit of £4,200.

American Express says the credit limit that was set was based on a number of factors including the information given on Miss S's application form as well as external information such as that held by credit reference agencies.

In January 2017, American Express increased the credit limit to £5,000 and then in March 2018 to £9,000.

In the summer of 2019 Miss S's account fell into arrears and a default was recorded by American Express in the December. The account was passed to a third-party company to be managed.

In March 2021 Miss S wrote to American Express requesting details about her account including charges levied and repayments made. She also set out that she had concerns that American Express had acted irresponsibly as the credit she had been given was unaffordable and she believed she shouldn't have been approved for the credit card.

Miss S said in her complaint that although her income was £2,410pm, her bills amounted to £2,360pm excluding any payments to the American Express account. She said had American Express conducted proper checks into her income and outgoings it would have found that the credit card account was unaffordable for her. She said dealing with the stress of struggling to make payments has had a significant impact on her.

American Express didn't uphold Miss S's complaint. It said there had been no error on its part in approving the credit card application nor in the subsequent rises to the card's credit limit. American Express said that it had conducted appropriate checks and that the decision to increase Miss S's credit limit was based on internal and external factors. It said that Miss S had been notified of the change to her credit limit and had been given the option to opt out of any credit limit increase offered but hadn't done so.

Miss S was unhappy at the response from American Express and complained to this service. Our investigator recommended that her complaint should be partially upheld. He said he thought the checks carried out for the approving the credit card and the first increase in the credit limit had been reasonable and proportionate. He said there weren't any signs Miss S would have found the credit agreement sustainably unaffordable.

But our investigator said that when the credit limit had been increased to £9,000 in March

2018, there had been signs that she was overindebted and struggling to reduce balances within a reasonable time. He said she had been using most of the £5,000 limit since that limit increase had been provided and had shown little ability during those preceding 15 months to pay down the balance.

Our investigator also said that Miss S's credit file had shown she had taken out two further loans and opened another credit card since credit limit rise to £5,000. He said this showed someone who was becoming increasingly reliant on credit and that an increase in credit for her would be unaffordable.

Following the credit increase to £9,000, our investigator said that the statements showed that her balance increased significantly to the point Miss S had been unable to sustain payments on the account and she had fallen into financial difficulties. He said this ultimately led to her defaulting on the account which he considered to be as a direct result of the credit increase. Our investigator said that under the rules, American Express should have assumed she would use the full credit limit immediately when assessing if the lending was sustainable.

Our investigator said that he thought American Express had information which demonstrated Miss S wouldn't be able to sustainably afford the credit limit rise to £9,000 in March 2018. He said he thought it would be fair for American Express to do the following:

- Rework the account to ensure that from March 2018 interest is only charged on the first £5,000 outstanding - to reflect the fact that no further credit limit increases should have been provided.
- If an outstanding balance remained once these adjustments had been made it should contact Miss S to arrange a suitable repayment plan for this.
- If no outstanding balance remains, any adverse information should be removed from her credit file

AND

- If the refund meant there was no remaining balance, any extra should be treated as overpayments and returned to Miss S

AND

- Pay interest of 8% simple a year on any overpayments from the date they were made (if they were) to the date of settlement.

Miss S agreed with the view of our investigator, but American Express disagreed. It said the rises to the card's credit limit in 2017 and 2018 were on basis of Miss S's annual earnings and that she had no history of late or missed payments. It also said that Miss S had actually secured a loan of £17,000 and a credit card after the credit limit had been raised to £9,000 and not before, so this wouldn't have had any impact on its decision. It said the evidence at that time was she had no other significant lending.

American Express said it had acted in line with the rules for responsible lending by considering the information, it was aware of. It said from the evidence, it believed she could repay the credit over a reasonable period of time.

American Express also said that it first spoke with Miss S about her account in May 2019, she had advised she had changed employment and was now on a lower salary. This was over a year after the increase to her credit limit. At that time a payment plan had been discussed. It said that while future changes of an individual's circumstances can sometimes be anticipated it believed it had conducted a reasonable and proportionate creditworthiness assessment in accordance with the rules and based on the information it had been aware of at the time. American Express said the change in Miss S's income had

been unforeseen by it.

As the parties were unable to reach an agreement the complaint was passed to me and I issued two provisional decisions along the following lines.

In the first provisional decision I explained that our approach to considering complaints about unaffordable and irresponsible lending is set out on our website. I'd had this approach in mind when considering what's fair and reasonable in the circumstances of this complaint.

In summary, before providing credit, lenders need to complete reasonable and proportionate affordability checks. There isn't a set list of checks a lender is required to carry out, it just needs to ensure the checks are proportionate when considering things like: the type and amount of credit being provided, the size of the regular repayments, the total cost of the credit and the consumer's circumstances.

Did American Express complete reasonable and proportionate checks to satisfy itself that Miss S would be able to repay the agreement in a sustainable way?

Account opening

Miss S had applied for the credit card online in June 2016. She'd declared an income of £42,000 per year. Her credit file showed that at that time she held one other credit card which had no reported adverse information. I hadn't seen that American Express conducted further verification checks such as obtaining payslips or bank statements. It had considered her credit file which showed Miss S had one other credit card with no missed payments or late payments. There were no markers for missed or late payments with her utilities either.

While I don't know the credit limit of the other credit card, I'd seen that her outstanding credit balance in December 2016 had been £3,963 which was the amount outstanding on the credit card she held with American Express. So, I thought it was reasonable to consider that Miss S either had a small credit limit or hadn't made a great deal use of the card.

As the credit limit was around 1/10th of Miss S's stated annual income and there was no adverse information in her credit file I thought American Express' checks on the affordability of this card for Miss S had been reasonable and the repayments would have been reasonably affordable for her.

I also thought that, based on the figures provided by Miss S in her complaint that had American Express asked to see additional information, such as bank statements, this would have supported its lending decision.

Looking at the income and outgoings set out by Miss S these were as follows:

Income:

£2,410pm

Expenses:

Rent £1000pm

Council tax £110pm

Bills £270pm

Food £250pm

Total: £1,630pm

This would have left Miss S with a disposable income of £780pm. I appreciated Miss S has raised in her complaint repayments for debts in excess of £500 but this figure didn't appear to have applied in June 2016 since there was only the other credit agreement in place at that

time.

So, I didn't think American Express had acted irresponsibly by providing the credit account with a limit of £4,200 to Miss S in June 2016.

First limit increase

In January 2017, American Express had increased the credit limit on Miss S's account to £5,000. When deciding this increase American Express had taken into account Miss S's management of her credit card account and her credit file. It said there was no adverse information in Miss S's credit record, and she had made regular payments towards her account paying over the contractual minimum amount required each month.

This had been an increase of £800 after Miss S had been managing her account for around six months. While Miss S had been making use of the account and used around three quarters of the balance, she had made regular monthly payments which were in excess of the contractual monthly minimum. I thought it was reasonable to say she was managing her account.

American Express's credit file checks would have shown that she had acquired one additional credit card with a limit of £200. But as her overall credit balance was the for the amount outstanding on this card, I didn't think there was any indication Miss S had been relying on debt or at risk of becoming overindebted. Her disposable income would have been sufficient to repay the credit cards she had. So, I was satisfied that in light of the evidence that American Express had carried out proportionate checks before increasing the credit card's limit to £5,000. It was reasonable to say that this first increase was sustainably affordable for Miss S.

Second credit limit increase

In March 2018 American express increased the credit card's limit to £9,000. American Express said that before deciding this increase, it had considered Miss S's management of the card account and also referred to the information contained in her credit file.

However, this was a substantial increase close to doubling the credit limit. I thought that when offering credit of this amount, that American Express should have conducted further enquiries rather than relying only on information as to how Miss S had run her account and what appeared on her credit file. I'd also seen that Miss S hadn't cleared the balance of the card and it was running close to the credit limit. Although I accepted this didn't necessarily mean this was a sign she was financially struggling since she had also made regular monthly payments above the contractual minimum. But it would have been proportionate and reasonable for American Express to have checked that the repayments were sustainably affordable for Miss S on a credit limit of £9,000.

A failure to carry out proportionate checks doesn't automatically mean that the increase in credit was unfair and unaffordable. I have to consider what further checks would have revealed and if the information would have altered American Express's decision to increase the credit limit.

And here I thought that had American Express carried out further checks it would have been satisfied that this increase was, at that time, sustainably affordable for Miss S. This was because by March 2018 Miss S's overall credit borrowing appeared to have been around £5,000 (this was the amount shown as outstanding in December 2017), she had a further credit card with £200 credit limit and had taken out two loans with repayments of £44 and

£30pm in May and August 2017. Both of these loans had also been for relatively short periods of around two years. So, it was reasonable to think that these additional credit limits hadn't significantly impacted on Miss S's disposable income.

I appreciated the payments on a £9,000 credit limit would be greater than those on the credit limit of £5,000. But when looking at Miss S's disposable income from the figures she had provided, then there would have been around £650pm as disposable income when taking into account the additional credit agreements she had entered into. I thought this increase was therefore sustainably affordable for Miss S.

Looking at the evidence that has been provided, I accepted that Miss S had and continues to have financial difficulties from around the spring/summer of 2019. And I was sorry to hear how stressful she has found this to be and the impact it has all had on her financial stability. But I'd seen the difficulties had arisen from her financial circumstances changing due to the company she worked for going into administration during 2019 which was some months after the credit increase.

I'd also seen that after the credit card's credit limit had been raised to £9,000 in March 2018, Miss S had entered into further credit agreements which would have increased the pressures on her income. Miss S took out two other credit cards and a loan with 55 monthly payments of £382.

I was satisfied that although American Express hadn't carried out proportional and reasonable checks in respect of the second credit limit rise to £9,000, if it had done so then I thought it would have been satisfied this was sustainably affordable for Miss S. I thought it was reasonable to say that it was unforeseen circumstances in respect of Miss S's job and the changes to her salary which had led to the financial difficulties.

Did the lender act unfairly or unreasonably in some other way?

I hadn't seen any evidence that American Express acted unfairly or unreasonably while handling Miss S's account and she hadn't raised any issues in her complaint. She had missed payments and the account had been defaulted in December 2019. This was in line with credit card's terms and conditions.

I'd seen that in May and June 2019 Miss S had spoken with American Express about her financial difficulties and she had said she needed 12 months to get straight and a payment plan was discussed. Miss S said she had got a new job with an increased salary of £50,000 per year in June 2019.

So, for the reasons set out above and while I appreciated this would be of disappointment to Miss S, I wasn't intending to uphold her complaint.

Miss S disagreed with my first provisional view in respect of the second increase to the credit limit in March 2018. She also raised a further increase which American Express had implemented in or around November 2018 when the credit limit had been increased to £13,000.

In regard to the March 2018 increase, Miss S said my decision hadn't been in line with a decision by another ombudsman concerning a bank loan Miss S had taken out for £17,000 which had been considered unaffordable by this service. She asked that I looked at that decision and also one concerning an overdraft facility from the same bank.

Miss S also said that the credit limit increase in November 2018 had been unaffordable and American Express should have carried out further checks to ensure she was able to pay this

amount back sustainably. She said this increase was unfair.

American Express said it agreed with my provisional view and that this final increase was in its view fair. It said it looked at how Miss S had been managing her account and her credit file, and it had been satisfied this was affordable for her.

I issued a second provisional decision along the following lines.

Dealing first with the credit increase in March 2018, I hadn't changed my view and I explained why. I had read the decisions in respect of the loan and the overdraft facility and I was satisfied that my decision hadn't been inconsistent with those findings because the ombudsman and investigator who dealt with those matters had both considered Miss S's financial position as in August 2018, so around five months after the increase by American Express on the credit card limit. This had also been after she had taken out significant further borrowing of £17,000 for a loan and £2,000 for an overdraft.

And as set out above, although I thought American Express should have undertaken more checks than it had when increasing the limit from £5,000 to £9,000, I still didn't think that had it done so, there would have been anything that would have alerted it to Miss S's becoming over indebted. I hadn't seen any evidence that in March 2018 her income and outgoings had altered substantially from when she had first applied for the credit card. So, even with the additional credit she had taken out prior to the March 2018 increase I thought it was likely she would have had enough disposable income to sustainably pay for this increase. The later loan and overdraft facility hadn't existed at the point American Express made its decision to increase the credit card's limit and so this increase of £19,000 debt wasn't relevant to the decision of whether this credit increase was affordable.

I also hadn't seen any evidence that it was this increase in borrowing rather than the later additional £19,000 that had been borrowed coupled with the change in financial circumstances which had led to Miss S's financial difficulties.

So, I remained of the view that the second increase by American Express to Miss S's credit limit had been fair. However, in respect of this matter, both parties could provide further information for me to consider if they wished, but neither side needed to provide any information or submissions that they had already made to this service again.

I'd seen that in December 2018 American Express had increased Miss S's credit limit to £13,000. This rise hadn't been considered in my first provisional decision because I hadn't been aware of it.

American Express's said this final increase hadn't been part of Miss S's original complaint so it wasn't included in the information it had provided to this service but I thought Miss S had been clear she had been complaining about all the credit increases on this credit card account.

American Express had then provided this information and so, I'd considered the final credit rise and issued a second provisional decision.

And as I didn't think American Express had carried out proportionate or reasonable checks when increasing the credit limit to £9,000 then I also thought it should have done more than rely on information as to how Miss S ran her account and her credit file when making this decision.

I was also unclear how American Express had considered this increase was affordable for Miss S when she had significantly increased her debt liabilities by taking out an additional

loan and overdraft in August 2018 as this information had been showing on her credit record. I thought that had American Express carried out reasonable and proportionate credit checks then it would have seen that this increase was unaffordable for Miss S and that her level of debt was becoming unsustainable. She had substantially increased her overall amount of debt by this point and with an increase to £13,000 for this credit card account would have owed well in excess of £30,000. And I thought that had American Express sought additional information, it would have seen Miss S wouldn't be able to sustainably cover the repayments on £13,000 of credit card debt in addition to her other commitments. I was therefore intending to uphold this part of Miss S's complaint.

As I didn't think American Express should have increased Miss S's credit limit from £9,000, I didn't think it was fair for it to charge any interest or charges on any balances which exceeded that limit. However, Miss S has had the benefit of all the money she spent on the account so I thought she should pay this back. Therefore, American Express should:

- Rework the account removing all interest and charges that have been applied to balances above £9,000.
- If the rework results in a credit balance, this should be refunded to Miss S along with 8% simple interest per year calculated from the date of each overpayment to the date of settlement. American Express should also remove all adverse information recorded after December 2018 regarding this account from Miss S's credit file.
- Or, if after the rework the outstanding balance still exceeds £9,000, American Express should arrange an affordable repayment plan with Miss S for the remaining amount. Once Miss S has cleared the outstanding balance, any adverse information recorded after December 2018 in relation to the account should be removed from her credit file.

As American Express has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

Miss S hasn't asked me to look at any parts of my second provisional decision again, but American Express has disagreed with it. It says that at the time of the final increase it believed her income was around £42,000 a year and that her external lending was around £8,000 as her Miss S's credit file hadn't revealed the true extent of the additional borrowing. American Express says that it was reasonable to expect Miss S to pay back around 5% of the credit limit and looking at Miss S's management of her account she had been making regular payments and had cleared the balance in September 2018.

American Express also says that when an increase to a credit limit is offered a minimum of 45 days' notice of the proposed increase is given to the consumer. It says the increase will not be applied before the notice period expires, however, a consumer may choose to accept the offer sooner, in which case the additional lending will be granted sooner, with the consumer's consent. In this case, the offer was made at the end of November 2018 and accepted by Miss S in mid-December 2018, some four weeks earlier than would have been the case without her intervention.

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 haven't changed my view. While I appreciate that Miss S's credit file didn't provide the full

picture of her lending at the time of this final increase and she had paid a lump sum off the balance shortly beforehand, I still think American Express should have done more than rely on these two factors when making this lending decision.

As explained above, I think American Express should have made further enquiries at the time it increased the credit limit to £9,000 in March 2018. This was because it was a substantial increase from the original credit limit and Miss S had run the account close to the credit limit. However, I also thought that had it made these proportionate and reasonable enquiries at that time that I didn't think that it would have uncovered information that would have led to a conclusion the increase was unaffordable for her. This was based on the figures Miss S had provided about her income and outgoings at that time.

I've seen that Miss S continued to run her credit card account close to the limit following the increase to £9,000 until September 2018 when she paid a lump sum of over £7,000 towards the balance. However, I think this payment was more likely than not linked to the loan she had taken out in August 2018.

American Express says this lump sum payment shows Miss S was managing her account well and that she could afford the increase to £13,000. It also says that looking at her credit file, this had shown external borrowings far lower than the amount she had actually borrowed. But I don't think this lump sum payment together with the amount of her external borrowing that was shown on her credit file meant that American Express didn't need to make further enquiries about her income and outgoings when making a fair lending decision. It would have been proportionate and fair for it to have asked more because this was a substantial increase of credit and the history showed that Miss S's credit account usually ran close to the limit. I don't think her income alone made this increase reasonable.

Had American Express asked for more information then it would have learnt about the true extent of Miss S's borrowings which included two further credit cards, a loan and an overdraft. I think looking at this information American Express would have considered an additional credit amount of £4,000 to be sustainably unaffordable for her.

While I appreciate Miss S accepted the offer to increase her credit limit and she has a responsibility to ensure she can repay what she borrows, I don't agree that this means American Express doesn't have any responsibility for making that offer. I think it's understandable that those facing pressing financial situations will accept credit that they may not be able to sustainably afford. As set out above, had American Express made proportionate and fair enquiries before increasing the credit limit then it wouldn't have offered that additional amount to her.

I'm therefore partially upholding Miss S's complaint in respect of the final credit rise to her credit card account in December 2018.

Putting things right

I'm asking American Express to do the following:

- Rework the account removing all interest and charges that have been applied to balances above £9,000.
- If the rework results in a credit balance, this should be refunded to Miss S along with 8% simple interest per year calculated from the date of each overpayment to the date of settlement. American Express should also remove all adverse information recorded after December 2018 regarding this account from Miss S's credit file.

- Or, if after the rework the outstanding balance still exceeds £9,000, American Express should arrange an affordable repayment plan with Miss S for the remaining amount. Once Miss S has cleared the outstanding balance, any adverse information recorded after December 2018 in relation to the account should be removed from her credit file.

As American Express has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

My final decision

For the reasons set out above I'm partially upholding Miss S's complaint in respect of the final credit rise applied to her credit card by American Express Services Europe Limited. I am asking American Express Services Europe Limited to do the following:

- Rework the account removing all interest and charges that have been applied to balances above £9,000.
- If the rework results in a credit balance, this should be refunded to Miss S along with 8% simple interest per year calculated from the date of each overpayment to the date of settlement. American Express should also remove all adverse information recorded after December 2018 regarding this account from Miss S's credit file.
- Or, if after the rework the outstanding balance still exceeds £9,000, American Express should arrange an affordable repayment plan with Miss S for the remaining amount. Once Miss S has cleared the outstanding balance, any adverse information recorded after December 2018 in relation to the account should be removed from her credit file.

As American Express has sold the debt to a third party, it should arrange to either buy back the debt from the third party or liaise with them to ensure the redress set out above is carried out promptly.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 9 January 2023.

Jocelyn Griffith
Ombudsman