

The complaint

Mr K complains that American Express Services Europe Limited (Amex) gave him bad service on several issues.

What happened

Mr K had an Amex Platinum Business card and a personal Gold Card. Both accounts were closed in February 2021.

Platinum Business Card: Mr K responded to an offer from Amex – to spend £150 with a computer retailer (A) and get a credit for £150. He spent £10.74 on 2 June 2020. He ordered goods from A costing £132.83 on 9 July 2020 - £106.26 was debited to his card account on 7 September 2020.

Personal Gold Card: on 27 February 2020, the direct debit for £25 was returned unpaid. Amex marked Mr K's credit file with a late payment marker; and charged a fee of £12. The balance was paid off on 25 March 2020.

Mr K complained. He said that on the *business card*, he had fulfilled the terms of Amex's offer and should therefore receive the incentive of £150. He said that Amex's policy was for unlimited spending on a business card and Amex had imposed a limit of £10,000. He said this was due to the late payment on his personal card – which had nothing to do with his personal card. His business had been affected as the card had been declined and he couldn't easily use it in connection with purchases for his business.

On the *personal card*, Mr K said the reason the February 2020 payment was missed was that his bank had frozen his account due to a fraud on it. And therefore, the direct debit hadn't been paid. He said he'd called Amex at the time and was told that if he paid in the amount a few days late, then a late payment marker wouldn't be added to his credit file. Amex said that on the business card, the issue lay with the third-party supplier having items ready for delivery when the order was placed, and that wasn't their responsibility. Amex said they hadn't placed a spending limit on the business card.

On the personal gold card, Amex referred to a late payment in September 2021 – which was due to an error made by Mr K in setting up a direct debit – that's not part of Mr K's complaint that he's brought to us.

Mr K didn't agree with Amex's responses and brought his complaint to us. Our investigator said:

Business card: she said Mr K didn't fulfil the conditions of the promotional offer involving A. But she assessed a promotional offer in February 2021 – which is not the subject of the complaint Mr K has brought to us. She said Amex had the right to place a spending limit on the business card – this was in their terms and conditions.

Personal card: she said the late payment fee had been reasonably applied as Mr K had missed a payment. But after Mr K provided evidence that his bank had frozen his current

account due to a fraud, she issued another view which proposed that the late payment marker was removed from Mr K's credit file.

Mr K said in response (1) his complaint regarding the promotional offer related to a different date – July 2020 to August 2020 and (2) he agreed that the late payment marker should be removed

Amex didn't agree that the late payment marker should be deleted from Mr K's credit file – they said it had been correctly applied. They couldn't find any evidence that he'd contacted them about it.

Amex asked that an ombudsman look at Mr K's complaint. And Mr K asked that his complaint about the promotional offer is properly looked at – having regard to the dates of July 2020 to August 2020. Therefore, this complaint has come to me to look at.

I issued a provisional decision which said Amex acted reasonably – this said:

Mr K has raised several complaints regarding how Amex dealt with his Business Platinum business card and Personal gold card.

Platinum Business Card:

Promotional offer: I can see that Mr K made a purchase for £10.74 on 2 June 2020. And there is a debit to the business card of £106.26 on 7 September 2020. Mr K has shown us evidence that he placed an order with A for £132.83 on 9 July 2020. He therefore argues that he should get the promotional credit of £150 from Amex – he says he met the terms and conditions of the offer. We asked Amex more about this and they showed us the offer operating at the time. The offer started on 28 May 2020 and ended on 27 August 2020. The terms were that “*spend must be billed to your card by 27 August 2020 to be eligible for this offer. If A does not charge your card during this period, e.g. because of a delay in despatching your goods, you may not be eligible for the offer.*”

While I accept that Mr K placed an order with A on 9 July 2020; his card account wasn't debited until 7 September – quite possibly this was due to stock availability. And Amex's terms say they don't have to pay the incentive if that caused a delay. And a spend of £150 was needed to qualify – and Mr K only spent £117. Therefore, Amex were correct to decline to pay £150 to Mr K – as he didn't meet the terms of the offer.

Limit on card: Amex told us they didn't place a spending limit on the card. We also looked at the terms and conditions on the card. These say : “*from time to time, we may set a spending limit which may be permanent or temporary...*”. So – Amex could add a spending limit if they wished to – even though Amex have said they didn't do so. So here, I think Amex acted reasonably.

Personal Gold Card:

Credit file – late payment marker: I asked Amex more about this after our investigator's view. Mr K argues he called Amex when it happened. He showed us evidence that his bank had stopped his current account and that was the cause of the returned direct debit. But – Amex showed us all their call and chat records from January 2020 to April 2020 (on both cards) and – there isn't any record of Mr K contacting Amex. If there was such a record, it would've

been reasonable to say that the marker should be removed - as our investigator has said.

But - I can only go on the evidence we can see – and so on that basis, I must conclude that Amex were correct in reporting the late payment to Mr K's credit file. All banks, including Amex, have a responsibility to report accurate information to credit reference agencies – and that's what they did here. And so, on this aspect of Mr K's complaint, I disagree with our investigator.

And so, this provisional decision proposes that Mr K's complaint aren't upheld. I know this will be disappointing for him, but I am inviting comments from both Mr K and Amex before I issue a final decision.

Responses to the provisional decision:

Mr K made substantial comments. He said (in summary):

Platinum Business Card:

- Mr K accepted he didn't qualify for the incentive payment in connection with purchases from A.
- He accepted that Amex could restrict spending on the card, and that was included in the terms & conditions.
- But he said that the terms also said he should've been advised of this, and he hadn't been so advised. He showed us evidence of correspondence from Amex which said the card limit had been cancelled (after the event). This was an email dated 29 February 2020 which said "*We are writing to let you know your American Express Card ending in XXX has been temporarily suspended in Amex Pay in the Amex App. You can no longer make purchases using this card in the Amex App.*"
- He also showed us a further declined payment advice dated 8 March 2020.
- Mr K also argued that the spending limit on the business card was reduced because of what happened on the personal card. And because the business card was held by a separate legal entity (a limited company), that wasn't fair.

Personal Gold Card:

- Mr K showed us evidence that he had contacted Amex on 28 February 2020. This was in the form of an email dated on that day from Amex which referred to a telephone conversation and gave details of how to make a faster payment to the card account. The email was from Amex's 'Credit Management Services' dated 28 February 2020 which said, "*As per our telephone conversation, here are the details needed to make payments to us: (card details/sort code/account number)*".

We put his evidence to Amex and they maintained that Mr K hadn't contacted them about the personal gold card - and showed us their records which also showed no contact at that time. Amex also maintained they hadn't changed the spending limit on the business card. I now need to consider these points.

I then issued a second provisional decision in the light of the additional evidence which said:

Clearly we have contradictory evidence here. And where the information I've got is incomplete, unclear, or contradictory (as some of it is here) I must base my decision on the balance of probabilities. That is – what's more likely than not to have happened in all of the circumstances here, based on the available evidence.

Platinum Business card:

- It is accepted that Mr K didn't qualify for the incentive payment.
- Mr K has shown us evidence that the card spending limit was reduced. Amex have said it wasn't. And the Terms & Conditions also say Amex can take that action. But they also say that customers should be advised – and there's no evidence to show Mr K was so advised. And so here – I'm persuaded that Amex did reduce the spending limit of the card, and didn't advise Mr K. So - I propose to uphold this part of the complaint.
- Mr K also argues that the spending limit on the business card was reduced because of what happened on the personal card. I have no firm evidence one way or the other on this part of Mr K's complaint. But - I think it would be normal business practice for Amex to take an overall view of the relationship and take the action they did here. So I don't uphold this aspect of Mr K's complaint.

Personal gold card:

- Contrary to what Amex have told us – and what is shown in their call logs – Mr K has shown he did speak to Amex on 28 February 2020.
- We don't have evidence of what was said in that conversation. But I can see that payment to the card was due by 4 March 2020. And the direct debit was returned unpaid on 26 February 2020. I'm therefore persuaded that Mr K – consistent with his arguments – did contact Amex and Amex did advise him that a late payment would be OK and that it wouldn't affect his credit file. Therefore, I intend to uphold this part of Mr K's complaint.

I proposed that Amex remove the adverse data recorded on Mr K's credit file; and pay compensation of £200. (**continued**)

Responses to the second provisional decision:

Amex accepted the findings, and so did Mr K. In doing so, he said again that he didn't think Amex could change the limit on the business card because of what happened on his personal card.

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.

As both Amex and Mr K accepted the findings, my final decision is in line with the second provisional decision. I noted Mr K's comments about the business card, but I'm content that I dealt with that aspect in the provisional decision, and my views haven't changed.

My final decision

I uphold this complaint. American Express Services Europe Limited must:

- Remove the adverse data recorded on Mr K's credit file – the late payment markers in February 2020 – March 2020.
- Amex to pay compensation of £200 for distress and inconvenience.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 8 May 2023.

Martin Lord
Ombudsman