

The complaint

Mr G complains that American Express Services Europe Limited (AESEL) (Amex) unfairly registered a marker about him at Cifas, the national fraud database.

What happened

The detailed background of this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr G had an account with Amex.

In August 2023, Amex blocked Mr G's account and decided it needed to look into how he was operating his account. As part of its review, and in order to comply with its legal and regulatory obligations, Amex asked Mr G to provide it with two months' worth of bank statements. So, that it could understand how Mr G was funding the payments to his account.

In September 2023, Mr G contacted Amex and explained that he was abroad and as a result he would have trouble submitting the information Amex needed as part of its review. He said he needed access to his card urgently and asked Amex to remove the block.

In response, Amex maintained its position and told Mr G in order for the block on his account to be removed he'd need to provide the information it had requested and gave him two weeks to submit it to them.

Following this Mr G submitted two sets of bank statements for accounts he said he had with two other banks, which I will refer to as bank B and bank C. Amex scrutinised the documents and after doing so, had some concerns about their authenticity. So, it reached out to the other banks to verify if the documents were genuine. Bank B confirmed that the statement Mr G had provided was fake and that the account it related to – although belonging to Mr G – had been closed some years previously, in 2021.

Amex completed its review and placed a fraud marker against Mr G's name with Cifas, the Credit Industry Fraud Avoidance System. This was for misuse of a facility in relation to providing false documents. Amex also decided to close Mr G's account.

Mr G complained to Amex. He said the marker was causing him a lot of problems applying for a mortgage and was severely impacting his mental health. Amex looked into Mr G's complaint but didn't uphold it. It said it had closed Mr G's account in line with the terms and had loaded Mr G fairly with Cifas. Unhappy with this response Mr G brought his complaint to our service.

An investigator looked into Mr G's complaint. He asked Mr G about the statements he had provided to Amex and the impact of the marker. In response, Mr G said at the time he was being held against his will overseas by his father. Mr G said he'd only created the statements as his Amex account was his only means of financing his escape from his father. So, the marker was unnecessary and unfair. He said the marker has stopped him from applying for a mortgage, ruined his life and had led to him being on suicide watch.

The investigator reviewed everything and said that Amex hadn't done anything wrong when it had loaded a marker against him. Mr G disagreed. He wants the marker removed. As no agreement could be reached the matter 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.

I'll deal first with Amex's decision to block and close Mr G's account. Amex has extensive legal and regulatory responsibilities they must meet when providing account services to customers. Having looked at all the evidence, I'm satisfied that Amex acted in accordance with these obligations when it blocked and reviewed Mr G's account. And asked him to provide information. Amex was also within its rights to close Mr G's account and did so in line with the account terms and relevant regulations. So, I can't say Amex have done anything wrong when it closed Mr G's account.

I've next moved on to consider the loading of the Cifas marker against Mr G. The marker that Amex have filed with Cifas is intended to record that there's been a 'misuse of facility' – relating to Mr G providing a false document.

For Amex to record this it must be able to demonstrate that it had clear, relevant, and rigorous evidence to show that Mr G submitted false documents for the purpose of obtaining a benefit. They do not have to show that a fraud or financial crime has been committed, say, beyond reasonable doubt. But they must demonstrate that there are sufficient grounds to believe a financial crime was committed or attempted - mere suspicion or concern is not enough. A marker shouldn't be registered against someone who was unwitting; there should be enough evidence to show *deliberate* complicity.

So, I need to consider whether Amex had sufficient evidence to meet the standard of proof and load a marker for misuse of facility with Cifas. Having looked at all the information provided, I'm satisfied they have, and I say this because:

- It's not in dispute that the bank statements Mr G submitted to Amex as part of its review in September 2023, were not genuine. I've seen the evidence bank B provided confirming this to be the case. Mr G has also admitted that the bank statements he submitted to Amex were fake.
- Mr G has explained that he submitted the false statements so that Amex would remove the block on his account, and he could carry on using it – in other words to obtain a financial benefit. So, I am satisfied that he was a willing participant in what happened.
- Mr G has explained that when Amex blocked his account, he was being held against his will by his father, overseas. He's said that his Amex card was his only means of escaping from the situation. So, he contacted a friend who said that he would be able to create a fake set of bank statements in order for Mr G to provide them to Amex. Mr G says he was fully aware he provided Amex with false documents but says he only did so because he was in a desperate situation. So, he says Amex loaded the marker unfairly.
- I've considered Mr G's explanation about his motivation for giving Amex false statements. Mr G hasn't provided any evidence to support what he's told us. I note too from looking at Mr G's Amex account statement that he was using his account throughout June, July and August 2023 at various restaurants in the UK – which I find surprising given Mr G was supposedly being held captive overseas. So, I don't find his explanation credible. I have also considered what Mr G has said about the

impact the marker has had on his health, but I don't see any established link to his behaviour and decisions at the time.

So, having considered all the evidence available to me, I don't think there is any dispute that the information Mr G submitted to Amex, was false. As a result, I think it is fair and reasonable that Amex registered the Cifas marker against Mr G for misuse of facility. So, I won't be asking Amex to remove the marker or do anything further.

My final decision

For the reasons I've explained, my final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 1 July 2024.

Sharon Kerrison
Ombudsman