

The complaint

Mr J has complained American Express Services Europe Limited lodged a fraud-related marker on the industry fraud database, CIFAS, in his name.

What happened

In 2021 Mr J opened a gold credit card with Amex. A year later, he opened a business card account for his business, also with Amex.

In November 2022 Amex undertook a credit review of both of these accounts and required additional evidence. Mr J used a remote service to run the office-related aspects of his business and they responded to Amex with falsified information.

Amex closed both of card accounts and lodged a fraud-related marker on Mr J's record with CIFAS.

Mr J found that it was increasingly difficult to run his business, as well as having difficulty with limited financial account access. This increasingly caused him distress.

Mr J complained and asked Amex to remove the marker. Amex didn't feel they'd done anything wrong and refused to remove this.

Mr J brought his complaint to the ombudsman service.

Our investigator reviewed what had happened but believed there was no dispute that falsified information had been provided to Amex and felt she couldn't ask Amex to remove the CIFAS marker. However, she felt that marking this as a Category 6 marker was misleading. Amex agreed to change this to a Category 4 marker as this more resembled application fraud.

Remaining unhappy with this outcome, Mr J complained further. Mr J's complaint has been referred to an ombudsman.

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.

It is clear what the requirements are prior to lodging a marker. Specifically:

“That there are reasonable grounds to believe that a Fraud or Financial crime has been committed or attempted.

That the evidence must be clear, relevant and rigorous.”

So American Express must be able to provide clear evidence that an identified fraud was being committed and Mr J was involved.

There's also a requirement that Amex should be giving the account holder an opportunity to explain what was going on.

After a credit review, Amex reduced credit limits available to Mr J. All parties accept that falsified information was provided to Amex in November 2022 as part of Mr J's evidence to appeal this decision. The bank statements were shown as coming from Mr J's bank account, rather than those of his father, whose statements they really were.

I've seen the evidence provided by Mr J. This includes an affidavit from his remote assistant confirming that they were solely responsible for providing this direct to Amex from the business account. However, this is inconsistent with what Mr J has told us – that he forwarded the statements to Amex after receiving these from his assistant.

I've reviewed the evidence provided by Mr J's assistant. But like our investigator, I'm not sure why they would have – on their own initiative – falsified the information without Mr J being involved. Particularly as Mr J initiated the appeal against Amex's credit decision.

Even if Mr J had provided this information in good faith, I'd have to confirm that as the account holder, it is his clear responsibility to ensure that the data being sent to Amex is correct.

I've considered all of what Mr J has told us, but I'm not convinced by his testimony that he wasn't aware of what was going on.

The requirements around banks lodging markers at CIFAS include there being sufficient evidence that the customer was aware and involved in what was going on. I believe this exists in this case.

I'm not convinced that Amex fulfilled part of their requirements by contacting Mr J and giving him an opportunity to defend himself but based on the evidence I've seen, I'm not convinced this would have made any difference.

On this basis I don't believe it would be fair and reasonable to ask Amex to remove the fraud-related markers in Mr J's name.

Amex has agreed to amend the CIFAS marker to be a Category 4, rather than 6, marker. Mr J had argued that there was no misuse of his credit facility.

Finally new rules have been brought in by CIFAS this year. Mr J should note that because of his age when this marker was initiated, it will expire within three years, rather than six. I believe this will be November 2025.

My final decision

For the reasons given, my final decision is not to uphold Mr J's complaint against American Express Services Europe Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 5 September 2024.

Sandra Quinn
Ombudsman