

The complaint

Mr A complains that American Express Services Europe Limited (“American Express”) is holding him liable for a credit card account which he says he neither applied for nor knew about.

What happened

On 25 July 2024, I issued a provisional decision on this complaint. I wanted to give both parties a chance to respond before I issued my final decision. That provisional decision forms part of this final decision and is copied below.

“The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, in August 2022 a credit card was taken out with American Express in Mr A’s name. Mr A subsequently got in touch with American Express to let it know he hadn’t applied for the credit card. American Express investigated things and ultimately couldn’t reach agreement with Mr A, so he referred his complaint about American Express to us. As an Investigator here couldn’t resolve the matter informally, the case has been passed to me for a decision.

What I’ve provisionally 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.

Having done so, I’m not intending to uphold this complaint for materially the same reasons as our Investigator.

The key question is did Mr A enter into this credit card agreement, or was it done without his knowledge and consent as he alleges? Having considered this carefully, I think it’s most likely the credit card was taken out in Mr A’s name with his knowledge and consent, and he therefore did enter into the credit card agreement. I’ll explain why.

It’s not disputed that Mr A held a previous credit card with American Express between 2017 and 2021 (before the disputed application in August 2022) and that he made a further undisputed application for a credit card with American Express in December 2022 which was declined (after the disputed application in August 2022).

American Express has provided information from which I’m satisfied that:

- *The mobile number and email recorded against the American Express credit card Mr A held between 2017 and 2021 match the mobile number and email used in the disputed August 2022 application. The address differs, but I understand Mr A moved sometime during 2021 and 2022, so this would be expected.*
- *The mobile number and address used for the undisputed December 2022 application match the mobile number and address used in the disputed August 2022 application.*

The email address differs, but this would be expected if Mr A changed his email address or just used a different one.

- *Further details recorded against each of the three applications/accounts match, such as the name of Mr A's employer and Mr A's mother's maiden name.*

So, it appears from the information recorded that the disputed application in August 2022 was made using Mr A's correct details at the time.

American Express has also provided information, including a copy of the relevant call recording, which shows that, following the application being made on 3 August 2022, it called Mr A on 14 August 2022 on the same number which was associated with the credit card he held between 2017 and 2021, the disputed August 2022 application, and the undisputed December 2022 application. And the records of this call show that, during it, it asked Mr A whether he'd made the recent application, and whether he'd received the card, and Mr A said yes to both of these questions.

I've carefully considered everything Mr A has said about things. This includes that he never received any correspondence from American Express about the card during the relevant period; that the first he knew about the card, he says, was in 2023 when he heard from a debt collector; that the credit card didn't appear on his credit record, he says, until December 2023; and that he doesn't understand how such a large balance was allowed to be accumulated compared to the credit limit. However, I can see that whilst the address may have been changed after the credit card had been successfully applied for and used, American Express has provided a copy of a letter sent to Mr A in September 2022 at his current address; and it's provided convincing evidence that emails would have been sent to Mr A's email address, which as I've said was the same email address that was recorded for the credit card he held between 2017 and 2021 which he doesn't dispute. And in any event, bearing in mind what I've said about the information matching, and the evidence of the call which took place in August 2022, I cannot see a plausible explanation of how an unauthorised third party could have intercepted the card and PIN and used Mr A's mobile number on 14 August 2022 to confirm the account application as being genuine and the card in their possession. I therefore cannot fairly tell American Express that it should not be able to hold Mr A responsible for the credit card debt.

I'm aware Mr A has questioned how such a large balance was allowed to accumulate compared to the credit limit. But the complaint I'm addressing in this decision is American Express holding Mr A liable for the credit card account. Mr A should pursue his point about the balance exceeding the credit limit as a separate matter, in the first instance with American Express, if he still wishes to do so.

My provisional decision

For the reasons explained, I'm not minded to uphold this complaint."

Mr A disagreed and asked for an extension in order to respond fully. I therefore emailed Mr A on 23 August 2024 providing him with an extension to reply by 6 September 2024. As part of this email, in responding to points Mr A had made, I said that:

- I was satisfied when making my provisional decision that Mr A made an undisputed application to American Express for a credit card in December 2022 which was declined (this was referred to in my provisional decision as "*the undisputed December 2022 application*"). This was because that, as explained in my provisional decision, this was referenced in the business file we received from American Express and also because I'd listened to a recording of a phone call Mr A had with American

Express on 2 October 2023 in which, Mr A himself, said he remembered applying for a card last year or the year before but that it was declined.

- Even if I accepted that it wasn't Mr A on the call with American Express on 14 August 2022 (and I wasn't saying that I did accept that), I still wouldn't be minded to conclude that the disputed August 2022 credit card was taken out in Mr A's name without his knowledge or consent. This was because: American Express made this call to the same telephone number associated with the credit card Mr A held between 2017 and 2021, the disputed August 2022 application, and the "*undisputed December 2022 application*"; and because of everything else I'd said in my provisional decision. But also because this was an outbound call on American Express's behalf; as such, I didn't think this would have been expected, and it was very difficult to see how a third party would likely have had Mr A's phone at the time without his consent, ready to take the call.

Mr A then provided his response to my provisional decision and email of 23 August 2024 on 6 September 2024.

American Express didn't respond to my provisional 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.

Having done so, whilst I've thought carefully about everything Mr A has said, these points haven't changed my mind. And I've reached materially the same conclusions and for materially the same reasons as explained in my provisional decision and subsequent email to Mr A dated 23 August 2024.

In his response, Mr A appears to have disputed that what I called in my provisional decision the "*undisputed December 2022 application*" (which was declined) was made by him. He said that American Express has confirmed a yet further application was made in June 2023, which looks to be the application he would have been referring to in his call with American Express on 2 October 2023; and that the December 2022 application must have been made by the same fraudsters who made the August 2022 application given it was just four months later. However, during the call with American Express on 2 October 2023, Mr A said not only that he recalled applying for a credit card with American Express 'last year or the year before' (which would have been 2022 or 2021), but also that he'd applied again 'a couple of months ago' (which would have been around summer 2023), and both applications were rejected. So I'm satisfied that Mr A did make the December 2022 application (which was declined) and then a further application in 2023 (which was also declined). So this point of Mr A's hasn't persuaded me to change my mind.

Mr A has also referred to what he believes are inconsistencies in the information provided by American Express. For example, he said the DSAR information states the postcode used on the disputed August 2022 application was different to his actual postcode. But I'm not persuaded by this. American Express told Mr A in the call on 2 October 2023 that his correct address (which included his postcode) matched that used for the disputed application in August 2022. American Express has also provided a copy of a letter sent to Mr A in September 2022 at his current address (including the correct postcode) which I referred to in my provisional decision. American Express has also provided a copy of what I understand would have been the first credit card statement for the account dated 28 August 2022 which again includes Mr A's correct address including his postcode. I can see the address for the account seems to have been changed multiple times after this. But I've not seen any

information that persuades me that what American Express has provided about the address (including the postcode) at the actual date of the application (as opposed to later on) is wrong, or that this was anything other than Mr A's correct address. So this point of Mr A's also hasn't changed my mind.

Mr A has also said that information suggests calls were made to American Express about the card from abroad when transactions were being made in the UK, and that there are probably a plethora of ways fraudsters could have used his phone number to speak to American Express. But I haven't found what Mr A has said about this persuasive. I addressed this in both my provisional decision and my follow up email to Mr A dated 23 August 2024. And taking everything into account, including what I've already said about everything, I'm not persuaded it's most likely that, if this happened, it happened without Mr A's knowledge or consent.

I've considered everything Mr A has said. But for the reasons I've explained, I'm not persuaded to change my mind.

My final decision

For the reasons explained, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 8 October 2024.

Neil Bridge
Ombudsman