

The complaint

Mrs B complains that American Express Services Europe Limited (AESEL) irresponsibly lent to her.

Mrs B is represented by a solicitors firm in bringing this complaint. But for ease of reading, I'll refer to any submission and comments they have made as being made by Mrs B herself.

What happened

Mrs B was accepted for an Amex credit card in April 2022 with a credit limit of £1,000. Mrs B says Amex irresponsibly lent to her. Mrs B made a complaint to Amex, who did not uphold her complaint. Mrs B brought her complaint to our service. Our investigator did not uphold Mrs B's complaint. She said that Amex completed proportionate checks and they made a fair lending decision to approve the initial credit limit.

Mrs B asked for an ombudsman to review her complaint. She made a number of points. In summary, she said nine accounts were opened in the nine months prior to the Amex application being accepted, her credit file shows her constantly being overdrawn, and she exceeded her overdraft limit six times in the three months prior to the lending being approved. Mrs B called into question the expenditure figures Amex used, and she said her bank statements showed her income was nearly 30% lower than what Amex verified to be her income.

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.

Firstly, I'm aware that I've only summarised Mrs B's complaint points. And I'm not going to respond to every single point made by her. No discourtesy is intended by this. It simply reflects the informal nature of our service as a free alternative to the courts. If there's something I haven't mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual point to be able to reach what I think is a fair outcome.

Before agreeing to approve the credit available to Mrs B, Amex needed to make proportionate checks to determine whether the credit was affordable and sustainable for her. There's no prescribed list of checks a lender should make. But the kind of things I expect lenders to consider include - but are not limited to: the type and amount of credit, the borrower's income and credit history, the amount and frequency of repayments, as well as the consumer's personal circumstances. I've listed below what checks Amex have done and whether I'm persuaded these checks were proportionate.

Amex said they completed a credit check with a Credit Reference Agency (CRA) and they considered information that Mrs B had provided them before approving her application. The information showed that Mrs B declared a gross annual income of £36,000. Amex were able to verify the income through the CRA that they used. So although Mrs B has said the income

shown on her bank statements was 30% lower, it would not be clear why she would tell Amex she was earning £36,000 a year if she was earning a lower figure.

It could be the difference between Mrs B's gross and net income. But as Amex had been able to verify the income that Mrs B told them, then it would not be proportionate for them to request bank statements to see if the income differed to what an applicant told them.

Amex also received information from a CRA about Mrs B's existing accounts. Although Mrs B has said there were nine accounts opened in the nine months prior to her Amex application, the data from the CRA Amex used does not reflect this. That's not to dispute what Mrs B has told us, but this can occur when lenders don't report information about accounts to all of the CRA's.

It would not be proportionate for a lender such as Amex to request information from all of the different CRA's. And there is no regulation that compels them to do so. Therefore I can't hold Amex responsible for any third party lenders not reporting information to the CRA that Amex used for their checks.

The data Amex received from the CRA showed that Mrs B had opened two accounts in the previous 12 months prior to the application checks. One of these was a communications account which showed no lending balance. And the other was an unsecured loan opened in August 2021. So I'm not persuaded this alone shows that Mrs B was constantly opening accounts prior to the Amex card being opened.

The CRA reported that Mrs B had a total of around £17,345 of outstanding debt at the time of the checks. But the majority of this was for a hire purchase agreement (£15,897). The CRA also reported the monthly repayments for the fixed debt. So Amex were aware of the monthly repayments.

Amex also calculated Mrs B's expenditure. Their calculations included tax, housing costs and living costs. Plus they were aware of the fixed repayment costs of the lending. Amex's income and expenditure calculations led Amex to believe that Mrs B would be able to afford repayments for a £1,000 credit limit on the Amex credit card.

Amex are not required to verify an applicant's expenditure. From the information from the CRA they could see that Mrs B was overdrawn, but for seven of the previous 12 months she had either not been overdrawn at as shown by the reported account balance at the time, or she had been £156 or less into a £1,650 overdraft at the time the CRA reported her balance. The data at the time it was reported to Amex showed Mrs B wasn't utilising the full (or near the full) overdraft limit. And she was using less of her overdraft than she had been in the previous four months the CRA reported data for. So I'm not persuaded that this should have prompted further checks.

The data shows that Mrs B was in arrears on a mail order account months prior to the application for the Amex account. But this appears to have been an oversight. I say this because none of Mrs B's other active accounts show any arrears in the 12 months prior to the application checks (including the current account, so Amex wouldn't know her account had exceeded her overdraft). Mrs B brings the mail order account up to date the following month.

The CRA that Amex used reported that Mrs B did not have any payday lending at the time of the checks, and she did not appear to have any defaulted accounts. The data shows she wasn't bankrupt, and she had no County Court Judgements.

So I'm persuaded that Amex's checks were proportionate here, and I'm persuaded that they made a fair lending decision to approve Mrs B's application, and to provide her with a £1,000 credit limit.

I've also considered whether the relationship might have been unfair under s.140A of the Consumer Credit Act 1974. However, for the reasons I've already given, I can't conclude that Amex lent irresponsibly to Mrs B or otherwise treated her unfairly in relation to this matter. I haven't seen anything to suggest that Section 140A would, given the facts of this complaint, lead to a different outcome here. So it follows I don't require Amex to do anything further.

My final decision

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 15 April 2025.

Gregory Sloanes
Ombudsman