

## **The complaint**

Miss M complains American Express Services Europe Limited ('Amex') irresponsibly lent to her.

Miss M also complains about the way Amex handled a Payment Break Plan – as a result of which her account was defaulted and her credit file has been impacted.

## **What happened**

The facts of this case are familiar to both sides, so I don't intend to repeat them in detail here. Instead, I'll provide a summary.

Miss M applied and was accepted for a credit card in September 2022 with a credit limit of £3,000. The limit was not increased.

In July 2024 Miss M complained to Amex about its decision to lend to her and its handling of the payment break.

Later that month, Amex issued a final response in which it upheld Miss M's complaint in part. In short, Amex did not think it had acted unfairly when it agreed to lend to her. But it accepted that it made a mistake when it provided incorrect information about the exit date of the Payment Break Plan. It offered £75 *in recognition of the frustration and inconvenience* Miss M experienced.

Unhappy with this response, Miss M referred her complaint to our service.

One of our investigators reviewed Miss M's complaint. But they didn't think Amex needed to do anything further to resolve this complaint, and so they didn't recommend that the complaint be upheld.

Miss M didn't agree with the investigator's findings and so the complaint has been passed to me to review afresh.

## **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, I've reached the same conclusion as our investigator. I understand this will come as a disappointment to Miss M. However, I'll explain why I think this is a fair outcome in the circumstances.

However, before I do, I'm aware that I've summarised this complaint above in less detail than it may merit. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I will, however, refer to those crucial aspects which impact my decision.

Lastly, I would add that where the information I've got is incomplete, unclear or contradictory, I've based my decision on the balance of probabilities.

The Financial Ombudsman Service has set out its general approach to complaints about irresponsible and unaffordable lending on its website. And, having taken this into account along with everything else I need to consider, I don't think it would be fair or reasonable to uphold this complaint. I recognise this will be disappointing for Miss M. I hope my explanation helps her to understand why I've come to this conclusion.

In keeping with the information on the Financial Ombudsman Service's website, I think there are a number of overarching questions I need to consider when deciding a fair and reasonable outcome given the circumstances of this complaint:

1. Did Amex carry out reasonable and proportionate checks to satisfy itself that Miss M was likely to have been able to repay the borrowing in a sustainable way?

- i. If Amex carried out such checks, did it lend to Miss M responsibly using the information it had?

Or

- ii. If Amex didn't carry out such checks, would appropriate checks have demonstrated that Miss M was unlikely to have been able to repay the borrowing in a sustainable way?

2. If relevant, did Miss M lose out as a result of Amex's decision to lend to her?

3. Did Amex act unfairly or unreasonably in some other way?

#### Did Amex carry out reasonable and proportionate checks?

There are many factors that could be relevant when determining how detailed proportionate checks should have been. And while much will depend on the circumstances in question, the more obvious factors include – though aren't necessarily limited to:

- The amount of credit;
- The total sum repayable and the size of regular repayments;
- The duration of the agreement;
- The costs of the credit; and
- The consumer's individual circumstances.

As a result, the circumstances in which it would be reasonable to conclude that a less detailed affordability assessment was proportionate strike me as being more likely to be limited to applicants whose financial situation was stable and whose borrowing was relatively insignificant – especially in the early stages of a lending relationship.

I've carefully considered all of the arguments, evidence and information provided in this context and what this all means for Miss M's complaint.

Prior to agreeing to lend, Miss M was asked to provide details about her employer and her income – she declared she was employed full-time and her annual income was £32,000<sup>1</sup>. Amex has explained it used a service provided by the credit reference agencies to verify Miss M's declared income. This confirmed Miss M's declared income was accurate, so I'm satisfied that was a reasonable figure for Amex to use as part of its lending decision.

Amex also carried out a credit check which showed, in terms of active credit accounts, that Miss M had one unsecured loan (held with a communication provider), two other accounts described as 'communications', one mail order account and one credit card account.

Amex used what it found on her credit report – and applied estimates based on data from the Office of National Statistics - to understand Miss M's expenditure. That's an approach Amex is allowed to take under the relevant lending rules.

Looking at things in the round, I think Amex carried out reasonable and proportionate checks prior to agreeing to lend.

I say this noting the size of the credit limit relative to Miss M's declared (and verified) income.

What's more, this appears to have been Miss M's first lending with Amex. As such, I don't think there was any established pattern in her borrowing needs, at least from Amex, at that stage.

Whilst I think Amex proceeded with a proportionate amount of information, as I've said before, it then had to evaluate it because it still had to reasonably assess whether Miss M could afford to meet the repayments in a sustainable way.

#### Did Amex lend to Miss M responsibly using the information it had?

From Miss M's verified gross annual income (£32,000), Amex attributed 60%<sup>2</sup> to non-discretionary expenditure which includes housing costs, living costs and taxation. Of the remaining income, deductions were made based on what Amex understood – from the credit check it carried out - to be Miss M's external credit commitments. In my view, given the circumstances of this case, this is a reasonable way for Amex to calculate Miss M's income and expenditure.

Having done so, Amex was satisfied that Miss M would be able to reasonably service the lending in question – even if she utilised the entire credit limit – from her income.

In short, Amex was satisfied the lending should've been affordable for Miss M on a simple pounds and pence basis. This seems like a reasonable conclusion in the circumstances.

As I've said, Amex also carried out a credit check. Amex has provided a copy of the results of this search. It shows Miss M had a total indebtedness of £2,021 to unsecured creditors (spread across the five accounts referenced earlier). The credit search showed the combined monthly repayments for these debts was £46.

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<sup>1</sup> Miss M also declared 'Additional Income' of £31,500 – however this was not included as part of Amex's lending decision. With that being the case, I've also set it aside when considering whether Amex made a fair lending decision.

<sup>2</sup> Broken down as follows: 15% towards housing costs, 15% towards living costs and 30% towards taxation.

What's more, the search revealed that all of Miss M's accounts were up to date. And, as our investigator said, there was no evidence of financial problems – such as defaults<sup>3</sup>, insolvencies or any other public records (such as County Court Judgments) – which ought to have given Amex cause for concern.

I've reviewed the information available to Amex and I'm satisfied it had an accurate picture of what Miss M owed at the time of her application and the payments she was making each month. With that being the case, I think Amex accurately factored the cost of servicing Miss M's existing debts when considering her application.

So, looking at things in the round, I don't think the results of the credit check Amex carried out should have prompted further checks or prevented it from lending to Miss M.

Miss M says that her financial situation was worse than the information Amex gathered at the time suggested – she has provided a copy of her credit report in support of this. Specifically, Miss M has pointed to a total of six defaulted accounts totalling £3,994 – all of which were applied during 2020. Miss M also says there were ten missed payments on her credit file between 2021 and 2022. I am unsure why this information was not present on the credit check Amex carried out at the time. However, in the absence of anything that ought reasonably to have alerted Amex to the possibility Miss M's financial situation may be worse than the information it gathered suggested, I think I'd be applying the benefit of hindsight unfairly if I were to now use Miss M's own copy of her credit file to argue that Amex's credit search was in some way inadequate or incomplete when that didn't appear to be the case at the relevant time.

For the reasons I've explained, I think Amex carried out proportionate checks prior to agreeing to lend. I don't think there was sufficient cause for Amex to decline Miss M's application based on the output from those checks and I don't think there was sufficient evidence from the information Amex gathered to suggest Miss M would have difficulty repaying the lending in question in a sustainable way.

Therefore, I don't think it was unreasonable of Amex to grant the lending in question.

#### Did Amex act unfairly or unreasonably in some other way?

Miss M complains about Amex's handling of a Payment Break Plan.

By way of background, due to financial difficulties brought on by challenging personal circumstances, Miss M entered into a Payment Break Plan on 15 November 2023 until 5 February 2024.

On 6 February 2024, Miss M requested a second Payment Break Plan. Miss M received an email confirming enrolment onto the Payment Break Plan with a planned exit date of 5 May 2024.

However, due to an error by Amex, the Payment Break Plan was not set up correctly. As a result, its system expected a payment to be received in February 2024.

In March, Amex identified its error and instated the Payment Break Plan to begin from 21 March 2024 with an exit date of 5 June 2024. In doing so, Amex says it refunded interest and charges and remediated any credit file impact incurred as a result of the 'missed

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<sup>3</sup> From the results Amex has provided the credit card account I've referenced was reporting a 'D' status – our investigator asked Amex about this and it confirmed (via Experian) that this refers to a dormant account and not a defaulted account.

payment' in February 2024<sup>4</sup>. Notwithstanding this, it does seem that the missed payment triggered a default notice to be issued after 90 days in error. This advised Miss M that she needed to pay £361 before 9 June 2024. This was sent to Miss M on 24 May 2024.

On 23 March 2024, Miss M received an email confirming the new dates for the Payment Break Plan.

On 29 May 2024, Miss M contacted Amex via its online chat service to confirm the exit date of the Payment Break Plan. She was advised the plan was due to end on 5 June 2024 and a reduced minimum payment was payable on 30 June 2024. A few days after this conversation, Miss M received the default letter.

Following receipt of the default letter, on 4 June 2024, Miss M contacted Amex again via its online chat service. During this conversation, Miss M was wrongly advised that the Payment Break Plan ended on 5 May 2024 and her account was to be closed the following day (5 June 2024).

During this conversation, an income and expenditure assessment was completed during which it was established Miss M had a disposable income of £56 per month. As a result, Miss M was advised the most suitable solution Amex could offer her was its *long-term program called Regain*.

It is clear both in her conversations with Amex (and in her submissions to our service) that Miss M was keen on avoiding her account being defaulted. With that being the case, she agreed to enter the Regain program.

Miss M argues that, if she had been allowed to make the payment by 30 June 2024 – as she was advised during the online chat with Amex dated 29 May 2024 – she would have been able to do so because her income was due to increase as she was starting a new job. As a result, her account wouldn't have been closed. Miss M would like the account opened again so she can make repayments without the involvement of a third party.

It is not in dispute that Amex made mistakes with regards to the second Payment Break Plan – both when instating the plan and in the advice it provided to Miss M regarding the exit date. However, just because a business makes a mistake, it does not automatically follow that it needs to do something to put things right. Whether it needs to take corrective action will depend on what flowed from the mistake. So, like our investigator, I've thought about the impact of Amex's errors and, in the context of this case, what would likely have happened if everything had gone as it should have done.

If the second Payment Break Plan had been instated correctly from the outset, with an exit date of 6 May 2024, I am not persuaded Miss M would have been able to meet the expected monthly payments. As I've mentioned, the income and expenditure assessment carried out a month later indicated Miss M had minimal monthly disposable income (£56) once her regular and committed expenditure had been taken into consideration. Therefore, I don't think Miss M would have been in a position to meet the expected monthly repayment of around £400 once the plan would have come to an end in May 2024.

In response to our investigator's findings on this point, Miss M says that she could have arranged the payment using her partner's income, with a plan to reimburse him the following month from her increased salary. I don't doubt or disbelieve Miss M here. But I have to bear

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<sup>4</sup> As far as I am aware this action has been carried out and, although a notice was issued, no default was applied to Miss M's account at this time. This has been evidenced by the credit file Miss M has provided dated January 2025.

in mind that the credit agreement in question was in Miss M's sole name – therefore she alone is liable for the repayments. So, I am looking through the lens of what Miss M was able to repay from based on her own circumstances. And, as I say, the available evidence suggests she would not have been in a position to do so sustainably at this time.

With that being the case – and bearing in mind Miss M's stated aim was to prevent her account being defaulted – I think enrolment onto the Regain programme would likely have been an appealing option. So, on the balance of probabilities, I don't think Miss M would have found herself in a different situation if the Payment Break Plan had been set up correctly with a start date of 6 February 2024 and an exit date of 5 May 2024.

Alternatively, I've thought about what would most likely have happened if Miss M hadn't been given incorrect advice about the Payment Break Plan exit date and closure of her account during the online chat with Amex on 4 June 2024. It is my understanding that, if everything had gone as it should have done, Miss M would have had until 30 June 2024 (this being the payment due date following expiry of the Payment Break Plan) to make the required payment. I've thought carefully about this. Having done so, I'm not persuaded that this would have been sustainable.

It is clear from the bank statement Miss M has provided that her income did increase – as she said it would – in June 2024. And I can see that Miss M successfully repaid significantly reduced monthly repayments (under the Regain program) of £60 in June, and then £80 each month thereafter, until the last payment was made in December 2024.

But I note that payments under the Regain program were not maintained from January 2025 and the account has since been passed to a third-party debt collections agency. So, I'm not persuaded that that Miss M was able to *sustainably* meet the expected monthly payments after June 2024. With that being the case – and bearing in mind Miss M had been on two consecutive Payment Break Plans – I don't think Amex acted unreasonably by providing Miss M with the option to enter the Regain programme. And, on balance, I don't think Miss M has experienced detriment by her decision to do so. I say this because the Regain programme represented an opportunity for Miss M to enter a long-term arrangement to pay down the outstanding balance without incurring interest and charges and without incurring a default, which was important to her. After all, if Miss M hadn't entered the Regain program, she would have been expected to make higher payments to the ones she ultimately struggled to make which would likely have put her in a worse financial position.

I understand Miss M would like her account reinstated. However, having carefully thought about everything that has happened and weighing up what I think is most likely to have happened if everything had gone as it should have done, I don't think that would be fair in the circumstances. Further, I have not seen evidence to show Amex has made a mistake in the way it has reported the account to credit reference agencies<sup>5</sup>.

Notwithstanding this, I accept the receipt of the notice of default in error – as well as being provided with confusing and incorrect information during some of her conversations with Amex – would have caused Miss M unnecessary confusion and upset. Looking at things in the round, I think £75 is a fair way to recognise this, so I won't be recommending Amex do anything further to resolve matters.

In reaching this conclusion, I've also considered whether Amex acted unfairly or unreasonably in some other way given what Miss M has complained about, including

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<sup>5</sup> I say this up to the point Amex issued its final response to the complaint in July 2024. I make no comment on anything Amex has – or hasn't – done since the final response was issued. That would sit outside the scope of this decision.

whether their relationship with her might have been viewed as unfair by a court under s.140A Consumer Credit Act 1974.

However, for the reasons I've already given, I don't think Amex lent irresponsibly to Miss M or otherwise treated her unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here.

As I've mentioned, payments under the Regain programme were not maintained in January 2025. I understand this was due to a Direct Debit failure. Amex wrote to Miss M on 26 March 2025 to advise that – due to arrears her account - it was passing her account to a third-party debt collections agency. Miss M says she was not notified of any missed payment until receiving the letter dated 26 March 2025 and she *would have expected communication prior to such a severe outcome*. As far as I am aware, this complaint point has not been raised with Amex. Before our service can consider this matter, Amex must be given the chance to do so first. If Miss M remains unhappy upon receipt of Amex's response to this complaint – or upon expiry of the time for it to do so – she can refer the matter to our service for consideration as a separate complaint. I will make no further comment in relation to this matter within this decision.

### **My final decision**

My final decision is I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 8 August 2025.

Ross Phillips  
**Ombudsman**