

The complaint

Mr L complains that AMERICAN EXPRESS SERVICES EUROPE LIMITED trading as American Express ("AESEL") gave him a credit card and subsequent limit increase which he couldn't afford to repay.

What happened

In March 2003 AESEL gave Mr L an Amex Blue credit card. This account was closed around the time AESEL opened a Platinum account in August 2004. Mr L says he views this as one credit card account, as he says AESEL transferred him from the previous credit card to the Platinum credit card.

Mr L has said his initial limit was around £2,800 and around the time of the transfer to the Platinum credit card it increased to £3,800. He doesn't believe he had any further limit increases after this time. Mr L experienced financial difficulties and entered a debt management plan in April 2005. He has provided a copy of a letter from AESEL in April 2005 which states it is a "*notice of cancellation of your account and credit card account agreement with immediate effect*". His account was then transferred to the collections department.

Mr L has said that AESEL shouldn't have given him this credit. He says he was heavily overindebted at this time and couldn't afford to repay the balances. He complained to AESEL, but it said he had complained too late and outside the time limits which apply. So he referred his complaint to our service. Our investigator and another ombudsman reviewed the complaint and thought Mr L had complained in time. So they thought this was a complaint our service could consider.

The investigator then considered the merits of the complaint. She agreed Mr L was overindebted at the time and that if AESEL had looked into his circumstances, it would have realised this. So she didn't think AESEL should have agreed this credit card.

AESEL didn't agree and so the complaint has been passed to me to decide.

I issued a provisional decision explaining that I wasn't minded to uphold the complaint. To summarise, I said the following:

- I agreed Mr L had raised his complaint in time, but I thought his circumstances amounted to exceptional circumstances which caused his delay in complaining. So in any event, I agreed this was a complaint I could consider.
- Given the events in question took place a considerable amount of time ago, it is not fully clear what the initial limit on the Amex Blue credit card was as AESEL couldn't confirm this. However, I was happy to accept Mr L's account (together with the limited information available at the time) that it was £2,800.
- It wasn't entirely clear what happened in 2004. There is evidence to suggest a new account (Platinum credit card) was opened with a higher limit (of £3,800) and the existing account was closed. I can also see evidence to suggest this was an account

migration. In any event this makes no difference to the outcome of the complaint. There are two events to consider – the initial £2,800 and the increase to £3,800 (however it came about.)

- I set out that the majority of the rules and regulations which govern irresponsible lending today, significantly postdate the events in question. The then British Bankers' Association ("BBA") had published the Banking Code. And I'd consider this represented good industry practice at the time. The Banking Code required its members to assess whether it felt that a customer would be able to repay any credit provided. However, I explained why this doesn't represent the same standards and regulation which is in place today.
- Ultimately, I concluded that I didn't know what information AESEL had used when making its lending decision. AESEL has said it completed a credit search. However, I don't know what that would have revealed and I was mindful that Mr L didn't have key adverse markers on his credit file at the time such as CCJs or defaults. I also couldn't conclude what of his existing credit would have been featured on his credit file or if AESEL's search revealed this. Furthermore, although Mr L has provided evidence of his income at the time, I don't know if AESEL requested this information (it didn't have a requirement to). So I couldn't be satisfied it was or should have been aware of Mr L's actual income. So I didn't think I had sufficient information to conclude it was fair or reasonable to uphold this complaint.

AESEL confirmed it accepted my provisional decision. Mr L didn't accept my decision and made a number of points in response which I will summarise below.

- Mr L disagrees that his financial difficulties arose after AESEL provided the credit in question. He argues he was already overcommitted at the time and has provided details of his estimated outstanding debts with a number of different providers. He says that a credit search at this time, would likely have revealed the high number of accounts he had.
- AESEL failed to lend responsibly even by the standards of the time (2003/2004). To support this Mr L has referenced The Banking Code.
- AESEL acknowledges that it can't provide evidence of any credit checks or income assessments and the absence of these shouldn't shield accountability. Mr L feels that instead the provisional decision places the burden of proof on him to prove his creditworthiness.
- He feels the exceptional circumstances should inform the merits of the complaint and not just time limits for making a complaint. Specifically, that AESEL's failure to act responsibly in 2003/2004 had long lasting effects on Mr L.

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'm still not going to uphold this complaint. I appreciate this will be disappointing for Mr L.

I've read everything that the parties have said, but I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable

outcome. And our rules allow me to do this. This reflects the nature of our service as a free and informal alternative to the courts.

Time limits

I set out above, and in my provisional decision, why I thought this complaint was raised in time. (See my provisional decision for full reasoning). As AESEL has accepted my provisional decision, I see no need to explore this further.

Events in question

Again, as set out above, neither party has disputed that there are two events in consideration – the initial limit and the increase (which may have happened when the account was migrated). So, I am considering the granting of the limit (which was likely to be £2,800) in 2003 and the limit increase in 2004 to £3,800.

The expectations which were in place at the time of lending

As set out in my provisional decision:

“Mr L applied for the initial credit card in March 2003 and his credit limit became £3,800 in September 2004 according to his account notes. Both of these decisions to lend not only predated the current regulator’s (the Financial Conduct Authority (“FCA”)) rules and guidance which came in, in April 2014, it also predated the regulation of consumer credit and the regulatory period of the previous regulator the Office of Fair Trading (“OFT”).

Prior to the regulation of consumer credit, a number of lenders signed up to various voluntary codes. However, as explained above, both of the decisions AESEL made to give Mr L credit took place prior to the introduction of the main regulations and standards in relation to irresponsible and unaffordable lending.

Turning to the standards and expectations which were in place at the time of the lending decisions, the then British Bankers’ Association (“BBA”) had the Banking Code. And I’d consider this represented good industry practice at the time.

However, I think it’s fair to say that this didn’t represent the same standards and regulation which is in place now. I can see the investigator has referred to proportionate checks and understanding if a consumer can afford to sustainably repay the amount borrowed. However, these concepts represent the borrower focused tests which weren’t in place when AESEL made the lending decisions being complained about.

Subscribers to the Banking Code, at the time of Mr L’s application for a credit card and its decision to offer the limit increase, needed to assess whether it felt that Mr L would be able to repay any credit provided. From everything I’ve seen AESEL was a member, but even if I’m wrong (as explained above) I’d consider this to be good industry practice at the time. So I therefore need to consider AESEL’s lending decision in line with the expectations that were in place at the time.”

What information did AESEL consider before agreeing to lend?

As set out in my provisional decision, there is significantly limited information about the steps AESEL took before agreeing to lend and the information it based its lending decision on.

Mr L argues that this shouldn't shield AESEL from accountability. However, I have to reach a fair and reasonable decision and where I think it's reasonable that a lender can no longer provide the information, I have to take this into consideration.

In this case the events in question took place a considerable amount of time ago in 2003/2004. The credit agreement was also terminated in 2005. So not only did the events in question take place over 20 years ago, but the evidence suggests AESEL stopped lending to Mr L in 2005. Lenders aren't required to retain records indefinitely and I don't think it's reasonable to expect AESEL to have done so, especially when it also appears it stopped lending to Mr L a considerable amount of time ago.

AESEL has said it completed a credit search before lending. However, I don't know what this would have revealed (or if it actually did complete this at the time.) Even if it did complete a credit search, as set out above, the evidence doesn't suggest Mr L had any of the key adverse markers on his credit file.

Our investigator thought that Mr L was heavily overindebted at the time. Mr L has reinforced this in response to my provisional decision by providing a table of his outstanding debts from the time of the increase. However, I don't know what reporting standards were like at this time. I know they weren't as stringent as they are now. But I don't know if all his debt would have been reported to the credit reference agency AESEL used or how quickly they were updated. I also don't know if AESEL's credit search would have revealed any of his existing indebtedness or if it would have only revealed adverse markers. Given the passage of time, I don't think it's fair to conclude that it's most likely that this information would have been revealed. As explained in my provisional decision AESEL didn't have a requirement to gather specific information or review bank statements.

Mr L has argued that it was only a short period of time between AESEL agreeing the increase in August 2004 and the agreement being terminated in April 2005. However, I don't think it follows that this demonstrates I can safely conclude AESEL was or should have been on notice in August 2004 that Mr L was overindebted and it wasn't reasonable to lend. Particularly given the challenges I've highlighted relating to the limited information and credit file reporting standards.

I accept from everything Mr L has demonstrated now, that he was heavily overindebted at the time of both lending decisions and received limited income to repay these debts. However, this is Mr L's actual position and unfortunately for the reasons explained above, I don't have sufficient evidence to fairly conclude that AESEL was or should have been aware of this when agreeing this credit. I have considered AESEL's obligations under The Banking Code, however for the reasons explained, I don't have sufficient evidence to conclude AESEL has acted unreasonably in agreeing the limits when they were given. So it follows that I don't uphold this complaint.

Mr L feels the impact this credit has had on him should be taken into consideration when deciding this complaint. I appreciate Mr L has struggled financially and he provided details about the adverse impact this has had on his health and wellbeing. I'm sorry to hear of the troubles Mr L has experienced. This would be a consideration if I were to conclude AESEL had done something wrong in agreeing the limits. However, I haven't concluded this, so I can't go on to direct AESEL to compensate Mr L for the impact of his financial difficulties.

Other considerations

I've considered whether the relationship might have been unfair under s.140A of the

Consumer Credit Act 1974. As, although the account was closed in 2005 (based on the account termination letter) or 2006 (based on what AESEL has said), Mr L may have still been repaying this credit post April 2008, making this a relevant consideration.

However, for the reasons I've already given, I don't think I have sufficient evidence to conclude AESEL treated Mr L unfairly. So 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.

My final decision

For the reasons explained above, I don't uphold Mr L's complaint against AMERICAN EXPRESS SERVICES EUROPE LIMITED trading as American Express.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 3 September 2025.

Claire Lisle
Ombudsman