

Complaint

Miss M has complained that American Express Services Europe Limited (“AMEX”) irresponsibly provided three credit cards to her. She says that these cards were unaffordable and caused her ongoing difficulty going forward as she had to borrow elsewhere to make her payments.

Background

AMEX provided Miss M with a total of three credit cards. Her account history can be described as follows:

Account A – referred to as “Card A” going forward
June 2000 - Account opened with a limit of £7,800.00
September 2006 – Limit decreased to £1,600.00

Account B – referred to as “Card B” going forward
September 2005 – Account opened with a limit of £2,200.00
June 2006 – Limit decreased to £500

Account C – referred to as “Card C” going forward
June 2006 - Account opened with limit of £3,400.00
August 2007 – Limit decreased to £2,800.00
November 2007 – Limit decreased to £2,600.00
March 2008 – Limit decreased to £2,400.00

In April 2025, Miss M complained saying that the credit cards were unaffordable and she had to borrow elsewhere in order to make her payments.

AMEX did not uphold Miss M’s complaint. As far as it was concerned, Miss M had passed all the relevant checks to indicate that she could repay these credit cards. Miss M remained dissatisfied at AMEX’s response and referred her complaint to our service. When responding to our request for its file on Miss M’s complaint, AMEX told us that it thought Miss M had complained too late.

One of our investigators reviewed what Miss M and AMEX had told us. He thought that he hadn’t seen enough to be persuaded that AMEX failed to act fairly and reasonably to Miss M, when providing Miss M with these credit cards. This resulted in the investigator deciding against recommending that Miss M’s complaint be upheld.

Miss M disagreed with the investigator’s conclusions and asked for an ombudsman to look at her complaint.

My findings

I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

Basis for my consideration of this complaint

There are time limits for referring a complaint to the Financial Ombudsman Service. AMEX has argued that Miss M's complaint was made too late because she complained more than six years after the decisions to provide the credit cards as well as more than three years after she ought reasonably to have been aware of her cause to make this complaint.

Our investigator explained why it was reasonable to interpret the complaint as being one alleging that the relationship between Miss M and AMEX being unfair to Miss M as described in s140A of the Consumer Credit Act 1974 ("CCA"). He also explained why this complaint about allegedly unfair lending relationships had been made in time.

Having carefully considered everything, I've decided not to uphold Miss M's complaint. Given the reasons for this, I'm satisfied that whether Miss M's complaint about the specific lending decisions were made in time or not has no impact on that outcome.

I'm also in agreement with the investigator that Miss M's complaint should be considered more broadly than just those lending decisions. I consider this to be the case as Miss M has not only complained about the respective decisions to lend but has also alleged that this credit AMEX provided caused her ongoing difficulty as she had to borrow elsewhere in order to make her payments.

I'm therefore satisfied that Miss M's complaint can therefore reasonably be interpreted as a complaint about the fairness of her relationships with AMEX. I acknowledge AMEX still may not agree we can look at Miss M's complaint, but given the outcome I have reached, I do not consider it necessary to make any further comment or reach any findings on these matters.

In deciding what is fair and reasonable in all the circumstances of Miss M's case, I am required to take relevant law into account. As, for the reasons I've explained above, I'm satisfied that Miss M's complaint can be reasonably interpreted as being about the fairness of her relationship with AMEX, relevant law in this case includes s140A, s140B and s140C of the CCA.

S140A says that a court may make an order under s140B if it determines that the relationship between the creditor (AMEX) and the debtor (Miss M), arising out of a credit agreement is unfair to the debtor because of one or more of the following, having regard to all matters it thinks relevant:

- any of the terms of the agreement;
- the way in which the creditor has exercised or enforced any of his rights under the agreement;
- any other thing done or not done by or on behalf of the creditor.

Case law shows that a court assesses whether a relationship is unfair at the date of the hearing, or if the credit relationship ended before then, at the date it ended. That assessment has to be performed having regard to the whole history of the relationship. S140B sets out the types of orders a court can make where a credit relationship is found to be unfair – these are wide powers, including reducing the amount owed or requiring a refund, or to do or not do any particular thing.

Given Miss M's complaint, I therefore need to think about whether AMEX's decisions to lend to Miss M resulted in the lending relationships between Miss M and AMEX being unfair to Miss M, such that it ought to have acted to put right the unfairness – and if so whether it did enough to remove that unfairness.

Miss M's relationships with AMEX are therefore likely to be unfair if it didn't carry out reasonable enquiries into Miss M's ability to repay in circumstances where doing so would have revealed the credit cards to be irresponsible or unaffordable. And if this was the case, AMEX didn't then remove the unfairness this created somehow.

I've therefore considered whether AMEX acted fairly and reasonably when agreeing to provide Miss M with her credit cards.

Were the decisions to provide the credit cards unfair?

We do have an explanation about how we handle complaints about unaffordable and irresponsible lending on our website. However, it's fair to say that the overwhelming majority of our website guidance covers regulated lending. In this instance, all of the decisions that AMEX made to increase the amount of credit available to Miss M, predate the regulation of consumer credit lending and were made well before the obligations, which our current guidance is based on, were introduced.

Furthermore, I think that it would be helpful for me to set out that we consider what a firm did to check whether any repayments to credit were affordable (asking it to evidence what it did) and then determine whether this was enough for the lender to have made a reasonable decision on whether to lend.

Generally, we think it's reasonable for a lender's checks to be less thorough – in terms of how much information it gathers and what it does to verify that information – in the early stages of a lending relationship.

But we might think it needed to do more if, for example, a borrower's income was low, the amount lent was high, or the information the lender had – such as a significantly impaired credit history – suggested the lender needed to know more about a prospective borrower's ability to repay.

That said, I think that it is important for me to explain that our website does not provide a set list of mandated checks that a lender is expected to carry out on every occasion. Indeed, the requirements have not and still do not mandate a list of checks that a lender should use. Any rules, guidance and good industry practice in place over the years has simply set out the types of things that a lender could do when considering whether to lend to a prospective borrower.

It is for a lender to decide which checks it wishes to carry out, although we can form a view on whether we think what was done was fair to the extent it allowed the lender to reasonably understand whether the borrower could make their payments. Furthermore, if we don't think that the lender did enough to establish whether the repayments that a prospective borrower might have to make were affordable, this doesn't on its own mean that a complaint should be upheld.

Most importantly of all, we would normally only go on to uphold a complaint in circumstances where we were able to recreate what reasonable checks are likely to have shown – typically using information from the consumer – and this clearly shows that the repayments in question were more likely than not unaffordable. It wouldn't be fair and reasonable for me to uphold a complaint on uncorroborated allegations of unaffordability made a number of years after the event.

Did AMEX act fairly and reasonably towards Miss M when providing her with her credit cards in June 2000, September 2005 and June 2006?

When Miss M applied for these credit cards in June 2000, September 2005 and June 2006, this was not only before the current regulator's (the Financial Conduct Authority ("FCA")) rules and guidance which came in in April 2014, it also predated April 2007. April 2007 is important because this was when it became a requirement for a lender to become regulated in order for it to be able to provide consumer credit lending.

Therefore, all of AMEX's decisions to offer Miss M additional credit in June 2000, September 2005 and June 2006 took place prior to the introduction of the main regulations and standards in relation to irresponsible and unaffordable lending. That's not to say that there weren't any expectations or standards in relation to lending at the time Miss M applied for a credit card and the first nine limit increases were offered.

Indeed, the then British Bankers' Association had its own Banking Code in place at the time. Even though it's possible that AMEX wasn't a member, I still consider this code to be good industry practice. Nonetheless, it would be fair to say that its obligations and responsibilities were not the same as they are now.

For example, the concepts of borrower focused assessments and proportionate checks were not part of the expectations or requirements at the time. It's also fair to say that the requirements were more geared towards credit risk. In other words, the onus was more on the lender to understand whether the lender was happy to accept the risk of it not being paid, rather than understand how the prospective borrower would make their payments.

What a subscriber to the banking code – at the time of Miss M's application for a credit card – effectively agreed to do was assess whether it felt that the potential borrower would be able to repay any lending. I therefore need to consider Miss M's complaint in relation to these expectations that were in place on a lender at this time.

In this instance, I'm led to understand that AMEX will have agreed to Miss M's application after carrying out credit searches. And in June 2000, September 2005 and June 2006, AMEX concluded that Miss M would be able to repay amounts of £7,800.00, £10,000.00¹ and £11,700.00² when it made its respective lending decisions.

What's important to note is that Miss M was provided with a revolving credit facility rather than a loan. This means that to start with AMEX was required to understand whether Miss M could repay amounts of between £7,800.00 and £11,700.00 within a reasonable period of time.

A reasonable period of time has never been defined. But amongst things that are likely to influence what a reasonable period of time is, is the typical term a fixed sum loan for an equivalent amount is taken over. In 2000 to 2006, it's fair to say that fixed sum loans for amounts of between £7,800.00 and £11,700.00 would likely be taken over a terms of between five and seven years.

AMEX hasn't been able to provide any details on what it found out about Miss M as a result of the credit checks that it carried out prior to agreeing to provide these cards. Given the first of these applications took place more than a quarter of a century ago and the most recent application took place approaching two decades ago, I don't think that AMEX no longer having this information is unreasonable. Indeed, I can't think why it would be reasonable to expect AMEX to still hold this information.

¹ This is the maximum amount Miss M could owe as a result of Card A and Card B

² When Card C was provided Miss M's limit on Card B was reduced from £2,200.00 to £500. This meant that the total amount Miss M could owe as a result of Card A, Card B and Card C was £11,700.00 (£7,800.00 on Card A, £500 on Card B and £3,400.00 on Card C).

Therefore, I've not drawn any adverse conclusions as a result of AMEX not being able to provide this credit check information. In any event, I'm also mindful that I've not been provided with any information and neither has it even been argued, that Miss M had any significant adverse information recorded against her – such as defaulted accounts or county court judgments - at these respective times.

As I've explained, lending decisions in this period of time were more concerned with credit risk, rather than a borrower focused assessment of the impact of a customer having to repay any credit advanced. With it likely to be the case that Miss M didn't have any significant adverse information at the time of the respective applications, I can understand why AMEX felt confident that it would be repaid what it lent to Miss M.

Bearing in mind the period of time it was lending, I suspect that AMEX felt that Miss M could repay amounts between £7,800.00 and £11,700.00 within a reasonable period of time. As this is what AMEX needed to be satisfied of before lending in June 2000, September 2005 and June 2006, I've not been persuaded that AMEX's decisions to provide Miss M with her credit cards were unfair or that it resulted in unfairness going forward.

For the sake of completeness, I'd also add that, as I explained earlier in this decision, even if I were to conclude that AMEX did need to do more before providing these credit cards to Miss M, I'd still need to be satisfied that it doing more on the respective occasions would have led to it making different decisions. With this in mind, the extremely limited amount of information that Miss M has been able to provide on her circumstances at these times, do not clearly show me that this was the case.

I appreciate that Miss M may feel that it is unreasonable and unfair to expect her to provide information which she doesn't have and cannot reasonably be expected to have. But I also have to take into account that AMEX isn't required to have retained all of this information either.

As I've said, it's difficult to say that there is a justifiable expectation in terms of it having this information more than a quarter of a century after the earliest events. Ultimately, it was Miss M that chose to make her complaint in February 2025. And as I've explained, I can't conclude that AMEX doing more would have seen it reach a different conclusion, on the basis of Miss M saying this so far down the line.

It's clear that Miss M feels strongly about her complaint and I do sympathise with the difficulties that she has had. I also accept that given the rules, guidance and standards in place today - in relation to a lender now needing to ensure that it does not lend irresponsibly rather than just considering the credit risk – it's possible that AMEX wouldn't take the same lending decisions now.

It's also worth noting that while Miss M has referred to other complaints of hers (against other lenders) being upheld and also the content of final decisions on our database of published decisions, I suspect these cases all concern lending decisions made after lending became regulated.

In this case, all I can do is consider AMEX's actions against the obligations and expectations that were in place at the time and in light of this make a call on whether it acted fairly and reasonably at that time. Finding that a firm was required to do something that it wasn't, or retrospectively applying rules that didn't apply at the time, would not only result in a decision that is not fair and reasonable all the circumstances, it would result in a decision that was unlawful. So I can't view whether AMEX treated Miss M fairly and reasonably through the prism of today's standards.

Given, as I've explained, it's fair to say that the standards expected of lenders at this time was far more light touch than it is today and there's quite understandably very limited information from the respective times, I've not been persuaded that it was clearly unreasonable for AMEX to have provided these credit cards to Miss M.

Therefore, bearing in mind all that I've considered here, I don't find that Miss M's lending relationships with AMEX were unfair. I've not been persuaded that AMEX created unfairness in its relationships with Miss M by unfairly lending to her when providing her with Card A, Card B, or Card C. Based on everything I've seen, I don't find AMEX treated Miss M unfairly in any other way either.

As this is the case, while I can understand Miss M's sentiments and appreciate why she is extremely unhappy, I'm nonetheless not upholding this complaint. I appreciate this will be very disappointing for Miss M. But I hope she'll understand the reasons for my decision and that she'll at least feel her concerns have been listened to.

My final decision

For the reasons I've explained, I'm not upholding Miss M's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss M to accept or reject my decision before 23 February 2026.

Jeshen Narayanan
Ombudsman