

The complaint

Mrs M complains that she contacted American Express Services Europe Limited ('Amex') for help before she fell into arrears on her credit card account. She says that instead of helping her, Amex defaulted the account.

Mrs M would like the default to be removed from her credit file and for Amex to agree to a payment plan.

What happened

In June 2024, Mrs M contacted Amex because she knew her household income was about to reduce. She later complained that Amex did not offer her any forbearance and instead defaulted her account and reported this to the Credit Reference Agencies ('CRAs').

Mrs M also thought the default notice she received was defective and Amex sent her confusing letters about the action being taken on her account.

Amex did not uphold the complaint. They said the default had been applied in line with their normal processes.

Mrs M didn't agree that this was fair and asked the Financial Ombudsman Service to look into the matter.

Our investigator asked Amex for more information and recommended that the complaint should be upheld. Although she thought the default itself had been correctly applied, she did not think Amex had communicated fairly with Mrs M. She recommended Amex pay £150 compensation.

Amex agreed to do this. However, Mrs M said Amex had contributed to the circumstances in which her account defaulted, and had reported a default even though she maintained a payment arrangement. She therefore asked for an ombudsman's 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.

I've taken into account any relevant law and regulations, the regulator's rules, guidance and standards, codes of practice and (where appropriate) what is considered to have been good industry practice at the relevant time.

Having done so, I broadly agree with our investigator and I uphold Mrs M's complaint in part. I think Amex should pay Mrs M £150 for the distress and inconvenience they caused her. But I don't think it would be fair to require Amex to do anything more than this. I'll explain why.

I think it would be helpful to explain the role of the Financial Ombudsman Service is to resolve individual complaints based on what is fair and reasonable in the circumstances of each case. We don't have the power to make rules for financial businesses, in terms of directing that they should change their policies or procedures. That is the role of the regulator, the Financial Conduct Authority ('FCA').

I'm satisfied that Mrs M contacted Amex in June 2024 because she did not expect to be able to meet her minimum payments going forward. She wasn't in arrears at the time. At that point, her preferred option was to make reduced payments until her household income improved, which Amex understood was likely to take around a year.

Mrs M completed an income and expenditure assessment showing a significant negative disposable income. Given this, I think Amex reasonably concluded that Mrs M couldn't afford to pay her account, and that arrears were likely to build up quickly.

In those circumstances, I don't think it's unreasonable that Amex offered Mrs M their long term Regain plan. This involved cancelling Mrs M's direct debit, closing the account and referring it to a collections agent to arrange affordable repayments over time.

Mrs M said she was initially advised to do nothing for a few months, which she feels contributed to arrears building up quickly. I don't think it was unreasonable for Amex to suggest waiting until an affordable arrangement could be made with their collections agency, especially as the affordability assessment showed payments were not realistically possible at that point. Mrs M didn't make any payments for a few months, and this is accurately reflected on her credit file.

I've not been able to listen to Mrs M's call with Amex when the Regain plan was discussed. However, I have seen the script Amex's agents are trained to follow. This explains that a default may be reported where an arrangement is not maintained or where only token payments are made. As Mrs M was advised to wait to set up an arrangement, I can understand why she was surprised and upset to receive a default notice.

I agree that the default notice formed part of the administrative process of closing the account. This reflected Amex's terms, which state:

"We may end this agreement immediately if...we reasonably believe you're unable or unwilling to pay your debts when due... In any of these circumstances, we may close your account and require you to repay immediately all amounts you owe us under this agreement in full together with any interest and charges that apply."

Mrs M feels the default notice was defective. However, section 88 of the Consumer Credit Act 1974 allows default notices to be issued even where a breach cannot be remedied.

I think it's important to explain that a default under the Consumer Credit Act 1974 is different from a default being recorded on a credit file. Although they use the same word and often happen around the same time, they are separate things.

The Information Commissioner's Office (ICO) explains on its website in its information to the public that while there may be a requirement under the Consumer Credit Act 1974 to issue a statutory default notice, there is no data protection obligation on a lender to issue this formal notice to individuals prior to marking the account as being in default on their credit file. This means that even if a default notice were defective, it would not prevent a default from being reported to the CRAs.

The ICO says it wouldn't expect a default to be registered with the CRAs until an account is between three and six months in arrears.

I can see that in a formal demand letter dated 20 July 2024, Amex warned Mrs M that it might register a default. However, another letter sent the same day said interest had been frozen and that Mrs M would be helped by a specialist agency. That letter didn't mention a default. I can understand why receiving these two letters together would have caused confusion.

A further letter dated 13 September 2024 specified a default would be registered *“if a default has not already been registered and you fail to engage or make payment in accordance with a payment arrangement.”*

Mrs M did make a payment arrangement, so I understand why she was disappointed when the default was still recorded.

However I also take account of the email sent by the collection agency on 25 September 2024. This accepted Mrs M’s offer to pay £85 a month but clearly said, *“We must advise that because you are only able to make small payments, a default will still be registered with the credit reference agencies if one has not already been registered.”*

Although Mrs M was told she would need to make higher payments to avoid a default on her credit file, she maintained the £85 monthly payments going forwards. There’s nothing to suggest she wasn’t trying to deal with the situation responsibly. I’m persuaded the default was recorded because of the level of arrears on the account in November 2024. In my view, the default on Mrs M’s credit file was likely an unavoidable outcome of her financial circumstances at the time.

Taking all this into account, I’m satisfied that the default was recorded on Mrs M’s credit file fairly and in line with the ICO’s guidance.

That said, I agree there were times when Amex did not provide clear and timely information about the account closure, the Regain process, the role of the debt collection agency, and the effect this would have on Mrs M’s credit file. I agree this added to her distress during an already difficult period.

Amex agreed with our investigator’s recommendation to pay Mrs M £150 compensation to reflect this. Having considered our published guidance and the impact on Mrs M, I’m satisfied this is a fair amount.

Putting things right

American Express Services Europe Limited must pay Mrs M £150 for her distress and inconvenience, to an account of her choosing.

My final decision

For the reasons I’ve given, I uphold this complaint and American Express Services Europe Limited must put things right as I’ve set out above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mrs M to accept or reject my decision before 21 May 2026.

Clare Burgess-Cade
Ombudsman