

## **complaint**

Mr A complains that American Express Services Europe Limited registered a Credit Industry Fraud Avoidance Scheme (CIFAS) marker against his credit file.

## **background**

Mr A opened an Amex account in March 2014. He used the account and says he told Amex he was having financial difficulties in April or May 2014 but he says Amex still provided information to CIFAS of a fraud which Mr A says is incorrect. He says that he was not avoiding payment but was unable to pay due to financial difficulties. He says the CIFAS marker has affected his relationship with other lenders and prevented him getting a bank account and he wants the marker removed.

Amex says it did not make an error in passing information to CIFAS. It says that when certain criteria is met, it is under a duty to pass on information to CIFAS.

Amex says Mr A purchased a large amount of foreign currency very shortly after opening the account in March 2014. This was a concern to Amex and it says it froze the account and asked Mr A to provide further financial information both in a phone call and by letter. It says it is a condition of the charge card account that the balance is settled in full each month and this was not done. As no payments were made, it issued a default notice in May 2014 and says that Mr A phoned in June 2014 to say that he had lost his job and was unable to pay the balance. Amex says it asked Mr A why he purchased large amounts of foreign currency when he was not in a position to pay it back and says Mr A was unable to answer this. As a result it notified CIFAS of a misuse of the account due to evasion of payment.

Mr A says he never received the letter in March 2014 requesting further financial information.

Amex says that it no longer has the call recording of the conversation in March 2014 but its records show that it requested further financial information.

Amex says that the first time it was informed that Mr A was in financial difficulty was in June 2014.

Our investigator was of the opinion that Amex had acted reasonably in all the circumstances. He confirmed when Mr A applied for his card he provided Amex with information including bank statements that his income was sufficient to afford the card. But our investigator confirmed that Mr A had told him that he had lost his job around the time or slightly before he got his Amex card.

Our adjudicator felt Amex had acted reasonably in notifying CIFAS for the following reasons:

- Mr A bought nearly £4000 in foreign currency within days of his account opening. This did not indicate Mr A was in financial difficulties.
- Amex requested financial information in March 2014 but did not receive anything.
- Mr A made no payments before the account defaulted or the CIFAS marker was added.

- Mr A only told Amex he was unemployed in June 2014 but has not provided any information to support his inability to pay.

Overall our adjudicator thought it was reasonable for Amex to conclude that Mr A was attempting to avoid making payment and therefore reasonable that they recorded this on CIFAS.

Mr A did not agree as he says that Amex do not have the call recordings and its notes are not accurate. He feels that Amex provided incorrect information to CIFAS.

The matter has been passed to me for a final decision.

### **my findings**

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

I have looked at the terms and conditions for the Amex account Mr A held. It states that Amex can suspend the account if it suspects unauthorised, improper and /or fraudulent use.

I can see that within days of opening the account Mr A made two large purchases of foreign currency. I find that it was reasonable for Amex to suspend the account and to request further information.

Where the evidence is incomplete, inconclusive or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

Both Amex and Mr A agree that a conversation took place in March 2014. Amex also says it wrote to Mr A requesting financial information but Mr A denies receiving the letter. I have seen a copy of the letter Amex says was sent to Mr A. I find that the letter was sent and I cannot hold Amex responsible if Mr A did not receive the letter. I have seen a note of the call and on balance I find Mr A was aware that Amex wanted further financial information from the phone call and Mr A has never provided this information.

Mr A says he notified Amex in April or May of his financial difficulties. Mr A says he has had difficulties obtaining the evidence to show he made calls in April and May to Amex. On balance, although Mr A may believe he phoned Amex in April and May to discuss his financial difficulties I find that he did not notify Amex of his financial difficulties until June 2014 and from the call note with both Amex and our service I find he was aware that he had financial difficulties when he first used his Amex card.

I agree with our investigator's opinion that it was reasonable for Amex to believe that Mr A had misused the account and to report this to CIFAS.

**my final decision**

I do not uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 January 2018.

Geraldine O'Donnell  
**ombudsman**