

The complaint

Mr J complains that American Express Services Europe Limited, trading as American Express ("American Express"), irresponsibly granted him a credit card he couldn't afford to repay.

What happened

Mr J entered into an agreement with American Express to have access to credit with a credit card account. The account was opened in September 2014 with a credit limit of £3,000.

Mr J started to get into difficulties with meeting payments on his account. He received his first notice of default in August 2015 and others followed. The account was cancelled in October 2016 and passed to a third party collection business. Since February 2017, Mr J has been making only nominal monthly repayments to his account.

Mr J says American Express didn't complete adequate affordability checks when it opened the account and shouldn't have granted him such a large credit limit. He also says he was already struggling financially when he applied for the card.

American Express says that Mr J's financial circumstances were of good standing at the time he made his application.

Our adjudicator disagreed and said that American Express shouldn't have given Mr J the card with the limit it had set.

As American Express hasn't responded to what our adjudicator has said about this complaint, it has come to me for a final 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.

American Express needed to take reasonable steps to ensure that it didn't lend irresponsibly. In practice this means that it should have carried out proportionate checks to make sure Mr J could afford to repay what he was being lent in a sustainable manner. These checks could take into account a number of different things, such as how much was being lent, the repayment amounts and Mr J's income and expenditure. With this in mind, in the early stages of a lending relationship, I think less thorough checks might be reasonable and proportionate.

But certain factors might point to the fact that American Express should fairly and reasonably have done more to establish that any lending was sustainable for Mr J. These factors include:

- the *lower* a Mr J's income (reflecting that it could be more difficult to make

any loan repayments to a given loan amount from a lower level of income);

- the *higher* the amount due to be repaid (reflecting that it could be more difficult to meet a higher repayment from a particular level of income);
- the *greater* the frequency of borrowing, and the longer the period of time during which a customer has been indebted (reflecting the risk that prolonged indebtedness may signal that the borrowing had become, or was becoming, unsustainable).

There may even come a point where the lending history and pattern of lending itself clearly demonstrates that the lending was unsustainable.

Before opening the account, I've seen that American Express gathered information about Mr J by carrying out a credit check and also asking him about his salary, which Mr J said was £40,000. But given the size of the credit limit I think it would have been proportionate and fair for American Express to carry out further checks to ensure it would be affordable. One way to do this would have been to verify the income Mr J said he was earning at the time.

I say this in particular because Mr J's salary had been self-declared and was based on his being self-employed. Mr J has said his income was negligible before he took out the card and so our adjudicator asked him to provide evidence of that. Mr J sent in copy accounts covering the tax years 2013 to 2014 and 2014 to 2015. Our adjudicator found that for the first period Mr J had declared pre-tax earnings of around £5,500 and for the second period he had declared earnings of around £24,000. I've also seen that Mr J told our adjudicator that he'd only started earning any significant income from his business in November 2014. Up until then he hadn't been taking an income and it had in fact been necessary for him to take out loans to keep the business going.

Having reviewed the evidence and information Mr J sent in, I'm in agreement with our adjudicator. It follows that I also agree that in order to have carried out reasonable and proportionate checks, American Express should have taken steps to verify Mr J's income at the time.

I've seen that American Express says it's likely its credit check took account of Mr J's existing debt obligations at the time he made his application, although it hasn't been able to provide us with details of the check. This is because, based on Mr J's declared earnings of £40,000 alone, it's likely he would have received an even higher credit limit. I've thought about this carefully but I don't think it alters the position that if American Express need to carry out property income checks before granting Mr J credit. So I think by not doing so Mr J was granted credit he couldn't afford to repay. American Express therefore needs to put things right.

Putting things right – what American Express needs to do

American Express shouldn't have granted Mr J the opening credit limit of £3,000. It therefore needs to do the following:

- Rework Mr J's account to ensure that all interest and charges should be removed from the account. All late payment and over limit fees should also be removed; and

- If an outstanding balance remains on the account once these adjustments have been made, American Express should contact Mr J to arrange an affordable repayment plan for the account. Once Mr J has repaid the outstanding balance, it should remove any adverse information recorded on Mr J's credit file in relation to the account.

OR

- If the effect of removing all interest, fees and charges results in there no longer being an outstanding balance, then any extra should be treated as overpayments and returned to Mr J, along with 8% simple interest per year on the overpayments from the date they were made (if they were) until the date of settlement. American Express should also remove any adverse information from Mr J's credit file.

†HM Revenue & Customs requires American Express to take off tax from this interest. American Express must give Mr J a certificate showing how much tax it's taken off if he asks for one.

My final decision

I therefore uphold this complaint and require American Express Ltd to pay compensation as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 4 August 2023.

Michael Goldberg

Ombudsman