

## **The complaint**

Ms G complains that American Express Services Europe Limited (“American Express”) is holding her liable for a credit card she says she didn’t apply for. She says she’s also unhappy that an address she has no connection to is appearing on her credit file in relation to American Express.

## **What happened**

The background to this complaint is well known to both parties, so I won’t repeat everything here. In brief summary, Ms G has explained that she fell victim to a scam between March and December 2022. She says, as part of the scam, in June 2022 a credit card was taken out with American Express in her name which she didn’t apply for. Ms G says she subsequently spent on the credit card to send mobile phones to the scammers as part of the scam.

Ms G subsequently got in touch with American Express to let it know she hadn’t applied for the credit card, and that an address she has no connection to was appearing on her credit file in relation to American Express. American Express couldn’t reach agreement with Ms G about how to resolve things, so Ms G referred her complaint about American Express to us. As an Investigator here couldn’t resolve the matter informally, the case has been passed to me for a decision.

I recently sent Ms G and American Express my provisional decision. Both Ms G and American Express have replied quickly, and I’m now in a position to explain my 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 has said there is nothing it would like to say in response to my provisional decision. Ms G, on the other hand, has sent me evidence of the purchases she made using the card, and she has said that she didn’t benefit from the majority of spending on the credit card. I’ve thought about this carefully. But this hasn’t persuaded me to change my mind. I take on board what Ms G has said, but as I explained in my provisional decision, she had the use of the funds and spent them, as she has acknowledged. So I’m satisfied the redress I set out in my provisional decision remains appropriate. And I’ve reached the same conclusions as in my provisional decision and for the same reasons. I’ve explained why again below.

The first question is: did Ms G enter into this credit card agreement, or was it done without her knowledge and consent as she alleges?

Having considered this carefully, I think it’s most likely the credit card was taken out in Ms G’s name without her knowledge or consent, and she therefore did not enter into this credit card agreement. I say this because where I can’t be sure about something, I need to

make up my mind on a balance of probabilities – in other words, based on what I think most likely happened, taking into account all the available evidence. Here I note when Ms G received the credit card she started to spend on it and it appears from American Express's records that she was in touch with American Express about it just a few days after the application and she didn't say then that she hadn't applied for it. But I think it's most likely that she's telling the truth. American Express hasn't provided any information persuading me otherwise. And I think it's most likely that she was tricked into giving a third party her personal details enabling them to apply for this credit card in her name without her knowledge at first.

Since I'm satisfied Ms G most likely didn't apply for or agree to this credit card agreement, I don't think it would be fair for American Express to hold her to the terms of the credit card agreement she most likely never saw or agreed to. So, American Express shouldn't hold Ms G liable for interest and charges, neither should there be a record of the credit card on Ms G's credit file – so if there currently is, this should be removed. American Express should therefore amend the outstanding balance to remove interest and charges. And should this mean, at the date of settlement, that Ms G has more than repaid the principal amount of spending on the card, American Express should refund the overpayment to Ms G plus interest calculated at 8% simple from the date of the overpayments to the date of settlement.

At the same time, based on what happened, I don't think American Express was reasonably to know the application hadn't been made by Ms G. So, it doesn't automatically follow that it would be fair for me to tell American Express that it should not be able to pursue Ms G for the principal amount of spending on the credit card (excluding interest and charges) that is still outstanding, or that it should be required to refund to Ms G any repayments of the principal amount of spending on the credit card she has already made. I take on board what Ms G has said about how she didn't apply for the credit card. But she had use of the funds and spent them, as she has acknowledged. So, I'm satisfied here, I can't fairly tell American Express that it should not be able to pursue Ms G for the principal amount of spending on the credit card (excluding interest and charges) that is still outstanding, or that it should be required to refund to Ms G any repayments of the principal amount of spending on the credit card she has already made.

Ms G has questioned how she was accepted for the credit card in the first place given its affordability. And I've thought carefully about this. But our usual approach on unaffordable lending is that interest and charges should be removed but the consumer should still pay back the principal amount of credit they had the use of. I've already said above this is essentially what I think should happen in this case. So, even if the credit card was irresponsibly lent (and I'm not saying it was), the redress I'm directing in this case would already cover what we'd normally award for this. I haven't seen anything in this case that persuades me appropriate redress would be different to this. So, I'm satisfied this doesn't change things.

I've also thought carefully about what Ms G and American Express have said about an address appearing on Ms G's credit file that she says she has no connection with. I understand American Express has said that this particular address wasn't logged in connection with the credit card successfully taken out in Ms G's name; but instead it was logged in connection with a credit card application received in July 2022, that ultimately was cancelled by American Express after it requested further information to support the application which wasn't then received. I understand Ms G's position is that she didn't make this application either. Bearing in mind what I've said above about me thinking it's most likely a third party made the credit card application in June 2022 without her knowledge, and the fact that American Express didn't receive the further information it requested in relation to this second credit card application in July 2022 – and in the absence of other evidence persuading me otherwise – I also think it's most likely Ms G didn't, as she's indicated, make

this second credit card application in July 2022. I appreciate American Express has said it's not able to remove this application from Ms G's credit file and that she should contact credit agencies to do this. But I understand Ms G has explained that she tried this, but they said they couldn't do it. And in this case, given I've decided this second application was also most likely made in Ms G's name without her knowledge, I'm satisfied that American Express should also remove from Ms G's credit file any information about this second credit card application.

### **My final decision**

For the reasons explained, I uphold this complaint in part and I direct American Express Services Europe Limited to:

- remove all interest and charges from the credit card balance;
- take any repayments already made to the credit card as having reduced the principal credit balance;
- if this should mean Ms G has more than repaid the principal credit balance, refund the overpayments to Ms G plus interest calculated at 8% simple per year from the date of the overpayments to the date of settlement (if American Express deducts tax from this interest, it should send Ms G the appropriate tax deduction certificate);
- remove reference to the credit card from Ms G's credit file;
- not pursue Ms G for more than the outstanding amount of the principal spending on the credit card; and
- remove reference to the second failed credit card application from Ms G's credit file.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms G to accept or reject my decision before 20 March 2024.

Neil Bridge  
**Ombudsman**