

The complaint

Mrs S complains that American Express Services Europe Limited (AESEL) ("AmEx") told her she was in credit, and gave her a large refund. Mrs S relied on what AmEx said, and spent the money. But then it said she wasn't in credit, and added the money to her debt.

What happened

Mrs S contacted AmEx to check the balance on her card. She was told she was just under £2,000 in credit. She asked AmEx to double-check, because she said it had made mistakes about her balance before, but AmEx was sure, and it would issue a cheque for the balance. Mrs S rang back a couple of days later, and was told the cheque was on its way. So she spent this money. AmEx then said that the balance had been wrong after all, and Mrs S owed it well over £2,000. Her card was over the limit.

Mrs S says she would never have spent this money without the repeated reassurances from AmEx. She said AmEx had blamed her, for making frequent smaller payments towards her debt. She thought that was ridiculous, and anyway, she'd only made two larger payments to her balance. She thought this was all AmEx's fault, and it should remove the disputed amount from her balance. And she was worried about how this would affect her credit file.

AmEx said that frequent small payments towards the card debt can lead to problems with an inaccurate balance. And it said that when Mrs S rang back to find out if her cheque had been issued, she didn't ask what her balance was. If she had, it would've told her that she was in debt. AmEx didn't think it had made a mistake, and it wouldn't do anything to help.

Mrs S complained to our service. She later contacted us again to say she'd stopped paying towards the debt, because AmEx was asking for ridiculous monthly amounts.

AmEx showed us that Mrs S had made frequent small payments towards her card debt, in the month before AmEx made the mistake about her balance. When Mrs S rang, AmEx says that she was actually a little less than £50 in credit. Mrs S rang again to make sure the cheque was on the way, she said then that her balance was £300 and said she'd pay that once she got AmEx's cheque. AmEx said it had acted in good faith.

Our investigator thought this complaint should be upheld. He said it was AmEx's responsibility to ensure that advice it gives about an account balance is correct. He said AmEx should've done further checks before issuing a refund that pushed a customer over her account limit. But Mrs S had benefitted from having the money, so he wouldn't ask AmEx to write off this amount. Instead, he said that it should do the following:

- pay Mrs S £150 for trouble and upset,
- waive late payment charges and interest for going over her limit,

- allow a payment arrangement to pay off £1,974 over a reasonable time frame, and
- amend any adverse credit file entries caused by the incorrect refund of £1,974.

Mrs S didn't think £150 was enough to make up for what had gone wrong. Our investigator told Mrs S that AmEx had agreed with his proposal, but she needed to make a payment onto her account urgently, or it would be closed. AmEx couldn't stop that from happening. Mrs S didn't want the card any more anyway, but she did want more compensation.

Our investigator didn't change his mind, and Mrs S said AmEx was getting away too lightly. As no agreement was reached, the case was passed to me for a final decision.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

Things started to go wrong when Mrs S received a large refund cheque, although AmEx didn't owe her this money. AmEx said Mrs S caused this, by making multiple smaller payments towards her debt, which confused its system. I can see she did make multiple small payments. But I think AmEx is primarily responsible for making sure information on account balances is correct. And if it's going to issue a large cheque, there is an onus on it to make sure that the account really does have a positive balance, to avoid just what happened here. It's unfortunate that AmEx appears to have realised, by the time it issued Mrs S with a cheque, that she didn't have a positive balance on her account, but the cheque was still issued and allowed to clear.

Mrs S did get the money from this cheque, so our investigator said she benefitted from it. I know that Mrs S doesn't feel she has benefitted from this money. She thinks it's been much more trouble than it was worth. But all our investigator meant when he said that, was that Mrs S had had, and spent, this money. I know AmEx made a mistake in paying this money to Mrs S, but I don't think that means she can just keep it. I agree that AmEx doesn't have to simply write off the mistaken refund it made. Mrs S should pay it back.

This isn't the same as ordinary card spending. So I don't think it's appropriate for this mistaken refund to be treated immediately as an ordinary credit card debt. I think AmEx should make some changes to how it is treating this debt.

I've also got to bear in mind that Mrs S doesn't just owe AmEx the wrongly refunded £1,974. Earlier this month, AmEx calculated Mrs S's total debt to it as £2,764.29.

AmEx has now stopped applying fees and interest to this amount. But some of this debt is still made up of interest and late fees AmEx applied earlier in the dispute. I think those amounts should simply be refunded, given the ongoing dispute between Mrs S and AmEx, and that she did stop using her card once she realised the problem. That refund should be used to reduce the overall debt Mrs S has to AmEx. I understand this will reduce her debt by around £400.

Mrs S will still owe AmEx more than the mistaken refund of £1,974. She also owes money she spent on ordinary card purchases. That has nothing to do with the mistaken refund. So I think, once the refund is made, AmEx should split this debt into two separate amounts.

AmEx should allow Mrs S six months to pay off the £1,974 of debt that I think was caused by the incorrect refund, starting from the date that my final decision on this case is accepted by Mrs S. AmEx shouldn't apply any interest or record any adverse credit file entries for this debt during this time. After this time, if Mrs S hasn't paid off the amount in full, AmEx can treat this debt as it would any other card debt.

I've said the refund Mrs S got isn't an ordinary card debt. And I don't think it's appropriate for this unresolved dispute to adversely affect Mrs S's credit file. So AmEx must update Mrs S's credit file to delete all adverse entries caused by this incorrect refund, and the subsequent dispute between Mrs S and AmEx.

Once it's refunded all the interest and late fees that it applied after 13 July 2019, and separated out the refund amount of £1,974, AmEx should give Mrs S one month to pay the remaining debt in the same way as it would any other outstanding balance. Again, that will start from the date that my final decision on this case is accepted by Mrs S. After that month, AmEx can treat this as it would any other outstanding card debt. That means recovery action may begin for this amount. Any record of this debt on Mrs S's credit file should not show it as outstanding prior to the end of this one month grace period.

I do think that this problem has been mainly caused by AmEx. And it has caused Mrs S considerable difficulty, at a time when she understood she'd paid off her debts. So I agree with our investigator that it's appropriate for AmEx to pay compensation in this case. I think AmEx should pay Mrs S £150 in compensation.

I think that would provide a fair and reasonable outcome to this complaint.

I invited the parties to make any final points, if they wanted, before issuing my final decision. AmEx didn't reply. Mrs S replied to suggest a different solution.

What I've decided – and why

I've reconsidered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint. I haven't changed my mind.

Mrs S said that £150 seemed a minimal amount of compensation. She said that she had to make several calls to AmEx, it hadn't called her once. And she had been chased by a collections team for the last ten months. She also said that she'd applied for a "soft search" mortgage decision in March 2020 and had been turned down due to a recent default on her credit file. She said even if this default was now removed, she'd signed a new twelve month rental contract, and was unable to move. She said that £400 to £500 seemed more reasonable, especially as I'd decided the majority of the blame lay with AmEx.

Mrs S said that she was happy to pay back the money, but she said that she was currently furloughed from work, and would like to ask for the repayments to be spread over a longer period, perhaps 12 or 18 months. And she'd also like her other debt with AmEx spread over this period. She said she'd contact AmEx straight away if her circumstances changed.

Mrs S also said that a debt collector was contacting her, and was offering a much lower settlement than AmEx. She asked what, apart from her credit history, would be the incentive for paying back the whole amount, when the debt collector was asking for much less? And she asked if AmEx would consider removing the adverse history from her file, and she could pay the debt collector.

I do think that this problem was mainly caused by AmEx. But I don't think it was solely caused by AmEx, and in particular, I don't think it's only AmEx's fault that Mrs S's entire debt, including the mistaken credit and an unrelated amount of money which was for purchases on her card, remains outstanding now.

The redress I've suggested allows Mrs S to pay back that mistaken refund on comparatively generous terms, and over a considerable period of time. It also ensures that this won't show on her credit report. I don't think AmEx has to pay additional compensation on top of this.

I'm sorry to hear that Mrs S's circumstances have changed, and that she's not been receiving her full wage. I note that the current circumstances also mean I can't assume any mortgage application she made in March would ultimately have been able to proceed.

I hope that this issue will soon be resolved for her. But in the meantime, I don't think it would be fair to Amex to amend the terms of this redress in the way she suggests. And, because I don't think it would be fair to AmEx to amend this redress, I won't suggest to it that it amends her credit file but leaves this debt in the hands of debt collectors.

I can't advise Mrs S on whether she should accept my decision, or reach an agreement with debt collectors instead. I can only confirm that I still think the award I proposed offers a fair and reasonable outcome to this case.

I'll now make the award I originally proposed.

My final decision

My final decision is that American express services Europe limited (AESEL) must, in line with the details set out in my provisional decision above:

- Refund all interest and late fees applied to Mrs S's debt since 13 July 2019.
- Split the remaining debt into two separate amounts.
- Allow Mrs S six months to pay off £1,974 of the debt, without applying any charges or interest, or recording any adverse credit file entries.
- Update Mrs S's credit file to delete all adverse entries caused by this incorrect refund, and the subsequent dispute.
- Allow Mrs S one month to pay the remaining debt in the same way as it would any other outstanding balance.
- Pay Mrs S £150 in compensation.

If either party has anything further to add, they should do so by the date set out at the top of this provisional decision. I'll then reconsider the complaint before reaching my final decision.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs S to accept or reject my decision before 4 August 2020.

Esther Absalom-Gough
Ombudsman