

The complaint

Mr G says American Express Services Europe Limited unfairly changed the terms of the companion voucher scheme that came as a benefit with his Amex card.

What happened

When Mr G took out an Amex card on 16 October 2020 it offered a companion voucher for a flight, at the same class as the paid ticket, if £20,000 was spent on the card in a 12-month period. On 1 June 2021 Amex gave notice that it was changing the terms of this benefit from 1 September 2021 to £12,000 of spend for a companion voucher that could only be used in economy class. Reminders were included in the statements from June to August 2021.

Mr G's August 2021 statement showed he had spent £18,014.47 so when the threshold was reduced on 1 September 2021 he was automatically eligible for a companion voucher, to be used in economy class.

Mr G says to do this Amex has relied on the wording *'As this agreement is not for a fixed period, we are likely to need to make changes to interest rates, fees and other terms and the services we provide for reasons we can't predict when the agreement was made'* in the account terms. But this change was not necessary and something that could not be predicted by Amex. So Amex is in breach of contract.

He wants to be able to use the companion voucher for a club class seat, or for Amex to cover the cost if he has to purchase a second club class seat. An economy class voucher is of no use to him.

Our investigator did not uphold Mr G's complaint. She said Amex explained in its response to Mr G's complaint that the change was in line with the terms Mr G had agreed to be bound by - and it had given more than the required notice. So she agreed with Amex's position.

Mr G disagreed with the investigator. He said, in summary, it was clear the terms of the agreement were to persuade cardholders to use their Amex card, over any other credit card, but this was in return for a specific benefit. There are two limits on Amex's right to change the terms - 'need' and 'for reasons we can't predict' - neither condition was met here. He disagrees that Amex gave fair and proper notice of the change as if it was to be retrospectively applied to his historical spend that negates the terms of the contract he originally agreed to. He argues the meaning of the notice was that the new conditions would apply to the next 12-month period. He says otherwise Amex's application of its 'right to change' term must be an unfair contract term.

In response our investigator issued a second assessment. She remained of the view Mr G had not been treated unfairly as the terms allowed Amex to vary the services offered. And she said that the terms of the account are a commercial decision made by the lender and not something we would interfere in, or comment on different interpretations thereof. She explained it would be for the Courts to rule if a term is unfair, or Mr G could report a contract term he believes to be unfair to the Competition and Markets Authority.

Unhappy with this outcome Mr G asked for an ombudsman's review. In summary, he said he understood this service could not dictate terms and conditions, but we must be able to hold a lender to its terms – and this change was not both needed and unpredictable. In addition he raised a further argument that the terms say '*we're likely to need to make changes to interest rates, fees and other terms*' so he would suggest the use of the wording '*other terms*' limits the changes to those of the same kind. And the rules of companion voucher are clearly not 'the same kind' as card features such as interest rates and fees.

As an agreement could not be reached Mr G asked for an ombudsman's review.

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.

Having done so I am not upholding Mr G's complaint. I have carefully read and considered all the points he has made during this investigation, but in keeping with our role as an informal dispute resolution service I will focus here on those that I find to be material to his complaint.

I do understand Mr G's frustration and disappointment when the terms of the companion voucher scheme changed. But that cannot influence my analysis, what I need to decide here is whether Amex acted in error, or treated Mr G unfairly and unreasonably.

I don't find that it has. I think the terms of the card and the Avios scheme - both parties are familiar with the relevant sections and so I won't repeat them here - allow Amex to vary the companion voucher conditions as it has.

I know Mr G strongly disagrees, but even if I accepted his interpretation of the relevant term I can't see that he has provided any evidence to support his view that the changes were not needed and for reasons that could not be predicted. Typically a lender changes the terms of its reward schemes for commercial reasons – and this could be impacted by a number of variables, such as cardholder spending patterns and the broader economic climate. So I would argue that they would most likely have been both needed and due to reasons that were not predictable. This is not something we would ask Amex for specific details of as it is not the role of the service to review commercial decisions.

I find it served the required notice of variation. Mr G argues – that if even allowed – this change should not have been relevant to historical spend as that negates his original contract. I understand Mr G's view, but I've seen nothing in the terms and conditions that suggests Amex must implement any changes in that way.

Finally, I find Mr G's last point that the 'right to change' term means any changes are to be limited to the same kind of things as interest rates and fees to be without merit. The term he has taken the wording from reads '*we're likely to need to make changes to interest rates, fees and other terms*' but it goes on to say '*and the services we provide*'. So I am satisfied it entitles Amex to alter features such as the companion voucher scheme.

I know this is not the conclusion Mr G wanted and it will not feel fair to him, but I haven't found anything to persuade me that Amex were at fault here. I believe it acted fairly in accordance with its terms.

I hope he will get some reassurance from the fact his complaint has been considered by a second independent and impartial third-party. This final decision marks the end of our complaint process, but as the investigator said if Mr G wishes to pursue his claim of unfair

contract terms he may be able to do so through the Courts or by reporting it to the Competition and Markets Authority.

My final decision

I am not upholding Mr G's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 19 August 2022.

Rebecca Connelley
Ombudsman