

The complaint

Mr L complains that American Express Services Europe Limited (AESEL) starting charging a fee for his credit card account without his agreement.

What happened

Mr L has a 'British Airways American Express Premium Plus Card'. He also holds an 'Amex Companion Card', for which he pays a fee, and as a result his British Airways card had been a free account. In June 2021 AESEL says it sent Mr L a notice of variation, explaining the account would incur an annual membership fee of £250 going forward. Mr L says he didn't receive that letter, so when he noticed the fee had been charged in April 2022 he called AESEL to query it.

Mr L told AESEL, over several calls and letters, he hadn't received any notice of the fee and didn't want the account if it was going to cost him. AESEL responded to his complaint in July 2022 to say its records indicated an email had been sent to Mr L in June 2021. That confirmed the introduction of a fee, and the removal of the clause which allowed him to hold the card for free if he also had an 'Amex Companion Card'. On that basis, AESEL didn't think it had made an error.

Unhappy with the response, Mr L referred his complaint to our service. He told us he had contacted AESEL many times over several months to try and resolve the issue, but hadn't received the call backs he was promised. AESEL had also continued to charge him interest on the account fee, and had written to say he was in arrears, despite saying he no longer wanted the upgraded version of the card in May 2022. Mr L was worried the dispute over the fee had affected his creditworthiness, as AESEL had reduced the limit on the credit card and eventually sent a default notice.

An investigator here reviewed everything and thought the complaint should be upheld. In her view, AESEL's service had been poor and Mr L ought to have been given the option to downgrade or close the account when he called. She recommended AESEL provided a pro-rata refund of the fee back to the date of his first call to query the issue in May 2022, and pay him £250 compensation for the trouble caused.

Mr L replied to say he agreed with most of the investigator's findings, but thought the full membership fee should be refunded – as he believed that's what should have happened when he first rang in May 2022. AESEL maintained it hadn't done anything wrong, and asked for an ombudsman to review things. As no agreement could be reached at the informal stage, the complaint was passed to me to make a final decision on the matter.

I issued my provisional findings saying I planned to uphold the complaint and go further than the investigator, in terms of the redress needed to put things right. I accepted that AESEL may have issued a notice of variation. But given it had included the information about the fee with lots of other changes, had opted Mr L in for paying it (rather than seeking his active agreement) based on terms he agreed to 20 years prior, debited the fee many months after the notice, and payment for it wasn't due when he first called to query it, I considered AESEL ought to have agreed to refund it in full at that point in May 2022. Not doing so, to my mind,

had caused Mr L lots of unnecessary worry and hassle – which meant I also increased the proposed compensation award to £500. I said I intended to direct AESEL to rework the account to remove an interest or fees charged as a result of the membership fee, to reinstate his original credit limit – and to downgrade Mr L's account to the free version (backdating as necessary the amendments to his points tally).

Mr L accepted my findings. AESEL disputed it was at fault in the matter – and raised the following points in response:

- It couldn't be held responsible for the notice going to Mr L's junk folder, and it had sent him other emails which it assumes he received.
- AESEL offered the second card for free as Mr L had a Platinum card, but in October 2019 he had downgraded that card to a Gold card.
- Mr L was enrolled into paperless communication, so it sent an email instead of a letter.
- AESEL maintained it was fair to charge the fee as the terms Mr L agreed to said it could make such changes as long as advance warning was given.
- Mr L never asked to downgrade his account, and he persisted in wanting the Premium Plus account for free. The option to downgrade was always available to him.
- Mr L's Premium Plus card was cancelled in February 2023.
- I have deemed its process of opting customers in to be unfair, and it has those procedures in place for all its members as it has to treat them all fairly.

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 reviewed the information provided to me, including the responses from both parties, I've not been persuaded to depart from the outcome I set out in my provisional findings. So I'm upholding Mr L's complaint – and I've explained why below.

I'm not suggesting AESEL is responsible for any emails going to Mr L's junk folder. It has evidenced the notice of variation was likely sent, but that doesn't change my view on what happened. I still don't know how exactly the notice would have appeared to him – whether, for instance, it would have been an attachment, and he needed to scroll to page two to discover the charge. The notice contained information about a lot of changes, so even if Mr L had seen it I could understand if he had missed that a charge would be applicable. The charge was then applied ten months later, without any other prior warning, without his active agreement – and based on terms he'd agreed to 20 years earlier.

I'm not suggesting that introducing a charge for the account wasn't fair in principle, and I'm not attempting to interfere with how AESEL generally chooses to run its business. I've just set out those circumstances as context for why I consider AESEL should have acted differently when Mr L called to query the charge in May 2022. I should point out, though, that treating all customers the same doesn't necessarily equate to treating them all fairly. I appreciate AESEL considers it followed its processes, but I don't think doing so in this instance has produced a fair result.

I've listened to all the calls involved in this case, and I disagree with AESEL's interpretation of them. I find that Mr L was amenable to downgrading his account, and made it clear he no longer stood to benefit from the features of the upgraded version – his circumstances meant he wasn't travelling like he used to. The sticking point was AESEL insisting a pro-rata

amount for the fee should be charged, and I don't think that was a fair approach. Mr L had contacted AESEL before the payment for the statement showing the fee was due, and explained he wasn't aware of the charge (for whatever reason). Taking account of all the context I've explained, AESEL ought to have removed the full fee, made any (very minor) adjustments to the points as necessary, and downgraded the account. Those were easy changes for AESEL to make, and Mr L gave every indication that would be an acceptable way forward during the conversations I heard. That didn't happen – and so all the subsequent impact caused to Mr L flows from that mistake.

It has led to almost a year of uncertainty for Mr L about the status of his account. He also called in and wrote to Amex several times to try and resolve things – with promises to contact him not being kept, and a significant amount of his time being wasted. The situation was understandably very frustrating for him, but he was also particularly worried by the impact this might all have to his credit file (even being served a default notice at one point). It appears Mr L incurred late fees and even had his credit limit downgraded as a result of this issue – which would have been distressing and embarrassing. Given the level of inconvenience and distress caused to Mr L over such an extended period, I don't think £250 goes far enough to address that impact. So, bearing in mind our published approach to these awards, I've decided £500 compensation is the fair amount in the circumstances.

AESEL raised that Mr L downgraded his other card to a Gold card in 2019. The notice of variation said it removed the clause allowing him to have the second card for free if he held a 'Companion Card'. I'm not sure if AESEL is saying Mr L's Gold card wasn't a Companion card, and so he didn't qualify for the Premium Plus account for free from 2019. So, perhaps AESEL is arguing it should have realised it could apply a fee for this account sooner than it did. Even if that is what AESEL is saying, then that's its own mistake, and I don't think it should have any bearing on the outcome here.

AESEL has also referenced this card being cancelled in February 2023. I'm unsure if that means the account has already been downgraded. I don't think the account has been closed (and it shouldn't be), as Mr L has mentioned receiving a new card around that time. But I've still included the downgrade in my directions, though, just in case that hasn't already happened. I've also not seen anything to suggest Mr L's credit limit was reduced for any reason other than the issues relating to the fee – so AESEL should reinstate it to the previous credit limit.

Putting things right

In order to put things right for Mr L, I'm directing AESEL to:

- Refund the £250 membership fee.
- Rework the account to remove any interest or charges relating to the fee, so as to make the account as if it had never been charged. If that generates a positive balance, AESEL should add 8% simple interest yearly to that amount – calculated from the point the positive balance would have starting accruing, until settlement is paid.
- Downgrade the account to the free version, and amend the points accordingly (so that Mr L didn't get the increased points benefit from April 2022).
- Reinstate Mr L's credit limit to the previous level (in April 2022).
- Remove any adverse data recorded about the account both internally, and externally with the Credit Reference Agencies, since April 2022.
- Pay Mr L £500 compensation for the sustained worry and effort this has caused.

My final decision

My final decision is I uphold Mr L's complaint about American Express Services Europe Limited (AESEL), and direct the credit card provider to put things right as stipulated above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 30 April 2023.

Ryan Miles
Ombudsman