

The complaint

Mr M complains that American Express Services Europe Limited (AESEL) has treated him unfairly in relation to how it has administered his account with it.

What happened

Mr M has a credit card account with AESEL. This account has the benefit of a loyalty programme that is run in partnership with a third party I'll call "M". Under the terms of Mr M's credit card agreement with AESEL he should receive loyalty points linked to his spending on his credit card. However, AESEL and M have not been able to link Mr M's credit card account to his loyalty programme account, despite several attempts.

Mr M has complained to both AESEL and M. But he has not been able to get to the bottom of things. Rather, Mr M tells us AESEL blames M, M blames AESEL. Therefore he has gone from pillar to post but nothing gets resolved.

Mr M indicates he is fed up with what he sees as getting the run-around, and he just wants the issue to be sorted. Specifically, he wants his points credited, he wants the annual fees for his AESEL account waived and compensation for his wasted time. At first, Mr M indicated that the compensation for his wasted time should be based on what he could have earned in his job if he had worked for the amount of time he has spent on the complaint. However, it appears that Mr M is no longer asking for the compensation to be linked to his pay. Further, Mr M intends to close his account with AESEL once this matter is resolved.

AESEL gave Mr M its final response. In its final response it gave the following explanation for what had gone wrong and why. Moreover, AESEL indicated it did not accept that it was responsible in any way, for what had gone wrong:

"You initially applied for the [account] via an online application. I have retrieved this file and it appears that when this was completed, you had entered part of your surname as your middle name. The system would have taken the information from the form and directly applied it when creating your account. This appears to be the route [sic] cause of the issue you have been having.....I have rectified this issue in our System and have started the process to link these, however, at the point of writing this letter it is still in pending status. Please contact us if this problem persists."

AESEL added that when Mr M had talked to a member of its staff at an earlier point they'd failed to see what the root cause was. Moreover, if that staff member had picked up the issue sooner that would have led to a quicker resolution. AESEL apologised for this and added 20,000 points to Mr M's account to say sorry.

Dissatisfied, Mr M complained to our service.

Once Mr M's complaint was with us AESEL provided further information. Specifically, it showed us a screenshot of the relevant internal system. AESEL told us that the information in its internal system was taken directly from the application made by Mr M. Therefore he'd made the data entry mistake not it.

AESEL also told us that it was down to Mr M to ask M to link his account with it to his AESEL account. In summary, the process is Mr M contacts M to ask it to link his account with it to his account with AESEL. M contacts AESEL. AESEL then sends the details it holds to M. M will then accept the link or reject it based on the details it holds. AESEL cannot access M's

records, so AESEL cannot tell what information M might hold. However, by way of exception to the normal process AESEL told us it had contacted M directly and asked it to link the accounts and it did (according to AESEL).

Mr M also provided further information. He denied entering his own data incorrectly thereby causing the problem in the first place. Besides the 20,000 points Mr M also asked for 15 Elite Night Credits to be added to his AESEL account, he said he'd earned these.

Moreover, Mr M made it clear that he thought AESEL's ownership of the issue was sadly lacking. Mr M suggested that maybe the problem had arisen because there could be character limits for the surname field in AESEL's system and that is why this had happened. If so, Mr M thought this was systemic discrimination. Also if so, he wanted AESEL to acknowledge this and fix it straightaway. Further, Mr M was concerned that if he was having this issue other customers might have the same problem too in future. Mr M therefore wanted AESEL to resolve this issue for the benefit of future customers too.

Mr M told us the link was still not working despite what AESEL had said. Mr M also demonstrated that M has the same information about his name as AESEL has (that is the same info for his forename and surname) so in theory M should now accept the link from AESEL.

AESEL responded that credits were based on how much a customer spends on their account and Mr M had not spent enough to earn the additional credits he'd asked for. AESEL was at a loss to explain why M had rejected the link, but it reiterated it cannot see M's systems, so it does not know what data M holds. However, it suggested the only way to resolve this was for Mr M to contact and indeed complain to M in order to put pressure on M to identify and resolve the problem.

Mr M then sent us information from M, in which M suggested the linking problem is solely the fault of AESEL.

AESEL responded that M is wrong to blame it and it also indicated again that Mr M ought to raise a complaint with M. AESEL reiterated that Mr M needs to complain to M to force it to look further at this matter.

There was then a lot of back and forth between AESEL, this service and Mr M, and between Mr M and M. Each time AESEL told us the problem was resolved it was not. AESEL repeated that the issue was with M, therefore it followed that Mr M had to look to M for a solution. AESEL also repeated that in its opinion it was being held to account for M's mistakes and this was not fair.

By this point the complaint had turned into a long-running complaint. In an attempt to bring the matter to a close, even though it did not accept responsibility AESEL offered Mr M £200 for distress and inconvenience as a goodwill gesture. The offer of £200 was in addition to the points AESEL had already offered.

One of our investigators looked into Mr M's complaint. Our investigator acknowledged that the root cause of the issue appears to be a technical fault. Moreover, at this point in time the technical fault appears to lie with M. That said, Mr M is AESEL's customer. AESEL offered the partnership arrangement with M to promote its product. Mr M opened his account in part because he wanted to benefit from this feature. In these circumstances, Mr M is entitled to expect that when things go wrong like this AESEL will step up and help him, not leave him to sort it out. However, we'd been going in circles, and it appeared that AESEL would never be able to resolve this issue with M within a reasonable time. This meant that our investigator had to come up with an alternative solution. Therefore our investigator recommended the following redress, AESEL should:

- Pay Mr M $42055 \times £0.007 = £295$ being the cash equivalent value of all the points that he has accrued to date on his AESEL credit card. Our investigator assumed that any enhancements that Mr M may have been entitled to from the 15 elite night

credits and from the actual nights of hotel accommodation he has paid for on the card are reflected in the points total.

- Refund the most recent year's card fee of £75 because Mr M hasn't had the full benefit of it.
- Pay Mr M £300 compensation for distress and inconvenience, to reflect the amount of time he has spent in correspondence about his complaint and to reflect its overall duration of around eighteen months.

Total compensation £295 + £75 + £300 = £670

Both Mr M and AESEL rejected our investigator's recommendation.

Mr M did not accept our investigator's recommendation for a number of reasons namely:

- He thought he should have got two years' worth of annual fees, in addition to the rest of the compensation that had been recommended. Mr M said this because from his perspective he has not received the full benefit of his AESEL account for those two years.
- In addition, Mr M reiterated the point he'd raised before about systemic discrimination, which he wanted to be addressed.
- Further, Mr M also indicated that we were letting AESEL get away with poor customer service by not making a higher award.

AESEL had previously told us that we were penalising it for the mistakes of M, which is why it did not think it should be held to account for what had gone wrong. But it did not respond at all to this recommendation, we took its silence to indicate that it did not accept our investigator's recommendation.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Mr M has now raised the issue of possible systemic discrimination. This appears to be a new matter and has not been considered by AESEL in its final response to Mr M or investigated within this complaint. It follows that I am unable to look at this matter in this decision.

That said, I'll add for completeness, systemic discrimination is a serious matter, (although I make no finding about this here) and I can see why it would concern Mr M. However, even if I could look at this issue in this complaint, which I cannot, I'd not be able to instruct AESEL to change its system for the benefit of both Mr M and other customers, which is what Mr M appears to want, in part. I say this because the question of what system a financial business has is an internal matter for an individual business to decide. We don't have the power to tell a business to change the system it uses. All I could look at would be whether that system meant that Mr M was treated unfairly. I could not also look at whether a cohort with similar relevant characteristics to Mr M were also impacted.

Mr M and AESEL disagree about most of the key points in this complaint. In particular, they disagree about what the root cause of the problem was. Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I've no reason to doubt that the screenshot that AESEL sent us is correct. I also have no reason to doubt AESEL when it says that the information in that screenshot was pulled directly from the application form Mr M filled in. I also don't doubt that Mr M genuinely believes he filled in the application correctly. However, on balance, I find it likely that the problem did start with a data entry mistake and that AESEL did not make that data entry mistake, (although that may not be the cause of the problem now, see below).

That said, that's not the end of the matter. Even though AESEL may not have caused the initial problem I would have expected it to have taken responsibility for helping Mr M to put the problem right. It seems likely that if this matter had been escalated high enough or to someone with the relevant specialist technical knowledge, there would have been someone at AESEL who could have talked to someone at M and between them they could have put things right. I am not asking AESEL to correct the mistakes of M, but neither am I saying that M is at fault. I'm merely saying AESEL should have talked effectively to M, who after all is a business it has a partnership relationship with. In other words, it treated Mr M unfairly by not doing all it reasonably could have done to get to the bottom of the problem.

Further, Mr M has been going around in circles with AESEL pointing him towards M and vice versa, this has been going on for months. I recognise AESEL says the problem does not lie with it, as it corrected the initial mistake that had been made by Mr M. I have no doubt it did correct this initial mistake. But if the initial mistake is what has caused the problem, and this has now been corrected by AESEL why does the problem still persist? This suggests something else too, has gone wrong here. But no solutions are being offered other than to suggest Mr M talk to M which he has done. Moreover I don't agree that in these very individual exceptional circumstances the onus should be on Mr M. I say this because this is an exceptional situation, Mr M is AESEL's customer and AESEL is best placed to resolve unusual issues with M, as I've already said. Even if the normal process is that Mr M should ask M himself to make the link.

In the circumstances, it seems unlikely that anyone at AESEL is going to bottom out the issue so that the accounts can be linked. Therefore, I find that ending the relationship and compensating Mr M for the benefits that he should have accrued to date is the best available outcome. I also find that all of this has likely caused Mr M distress and inconvenience for which AESEL should compensate him. I set out the redress for this below.

The question of how to put a monetary value on the benefits Mr M acquired is not an exact science. We asked AESEL for its opinion on how this might be calculated. It indicated it could not assist us with this. Therefore we gave it our proposal. It has seen the methodology we have suggested to calculate this redress. It has not commented on this although I am satisfied it has had a fair opportunity to do so.

Mr M indicates he thinks he should be compensated for two years' worth of annual fees i.e. year 1 and year 2. But I don't agree with him. I say this because Mr M is going to be compensated for the points he earned in year 1. He would only ever have qualified for those points if he had his AESEL account and paid the annual fee. It follows if he got both a sum to compensate him for the points he earned and a refund the annual fee for year 1, I'd be unjustly enriching him. I recognise though that Mr M may remain unhappy about this as he appears thoroughly exasperated with AESEL at this point, and it seems he believes that AESEL has totally let him down in both year 1 and year 2.

Also, I don't agree that £300 for distress and inconvenience is too little in the circumstances. This sum is meant to reflect the distress and inconvenience most likely experienced by Mr

M, which it does. I've noted what Mr M has said about AESEL's failings, but I'm not the regulator. It's not for me to fine financial businesses, and the awards I make aren't intended to be a punishment.

It seems Mr M is no longer asking to be compensated as if the time he spent on his complaint was charged out at his professional rate. If I'm mistaken about this then I'd say Mr M brings his complaint as a consumer not in his professional capacity. Therefore, what he would have earned if he charged AESEL at his professional rate for his time spent on his complaint, is irrelevant to my assessment of what is a fair and reasonable award for his distress and inconvenience.

My final decision

My final decision is that American Express Services Europe Limited (AESEL) must:

- Pay Mr M $42055 \times £0.007 = £295$ being the cash equivalent value of all the points that he has accrued to date on his AESEL credit card.
- Refund the annual account fee for one year that is year 2 - £75. Plus pay interest on the £75 at the rate of 8% simple per year. The interest to run from the date Mr M paid the annual account fee until the date of settlement.
- Pay Mr M £300 for distress and inconvenience.

Total compensation $£295 + £75 + £300 = £670$

American Express Services Europe Limited (AESEL) must pay the total compensation within 28 days of the date on which Mr M accepts my final decision. If it pays later than this, it must also pay interest on the £295 and £300 from the date of the final decision until the date of payment at the rate of 8% simple per year.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate (if it can) with the payment so that Mr M can reclaim the tax if he is able to.

Mr M should refer back to American Express Services Europe Limited (AESEL) if he is unsure of the approach, it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 26 September 2023.

Joyce Gordon
Ombudsman