

## The complaint

Mr M complained about American Express Services Europe Ltd's service in relation to two transactions which he said he didn't make.

## What happened

On 19 November 2022, Mr M received a suspicious phone call about his AmEx account. The caller knew some of his information, but Mr M didn't give any more information and rang AmEx straightaway. Later that day, he received two transaction alerts from AmEx, one for £15.97 and the other for £15.98, neither of which he had authorised. He rang AmEx, and was told they couldn't yet be disputed because they hadn't been posted to his account. He rang again when they'd appeared on his account on 21 November, and raised disputes.

On 22 and 23 November, AmEx emailed Mr M about the two disputes, saying: *"We have placed the disputed amount under review and therefore, you are not required to pay the charge while it is under investigation. The balance on your next statement will reflect the amount under review. It may take up to 8 weeks to resolve this matter. We will contact you as soon as we have completed the investigation."*

On 6 December, Mr M received his statement dated 28 November. The figure given on the first page as *"closing balance"* was £841.58, which included the two disputed transactions totalling £31.95. At the end of the list of transactions, there was a total showing £841.58 as *"total new spend transactions."* This was followed by separate wording: *"ITEMS IN SUSPENSE - These items are currently under review and excluded from the minimum repayment requested"* followed by the two transactions for £15.97 and £15.98. The app showed similar information to the statement.

Mr M thought the statement should have made it clear that the lesser amount should be paid, and that this amount should have been stated. He contacted AmEx by chat, and said that he spent over an hour and had to ask twice for a formal complaint to be raised.

AmEx sent Mr M an email on 17 December saying one of the transactions would be credited, but the other one wasn't mentioned, so he contacted AmEx again, where the chat implied the other had been closed. Mr M paid £809.63 which was the balance excluding the two disputed transactions. However, when he'd done so, the app adjusted to say the balance due was now £31.95. Mr M was concerned and Mr M decided to pay this amount for the transactions he hadn't authorised.

AmEx replied to Mr M's complaint in its final response dated 18 January 2023. It said that both card members and merchants were AmEx customers, and the dispute process existed to help the members and merchants reach a reasonable agreement. It said that a dispute was considered resolved once it had all the required information to make an appropriate decision, and at that point Mr M would receive confirmation of the outcome.

In relation to Mr M's dissatisfaction that the November statement had included the disputed transactions, AmEx pointed out that it had told Mr M by email, on 22 November, 23

November and 6 December that he wasn't required to pay the disputed amount while AmEx investigated. AmEx said that the disputed amounts were included on the statement balance because it was still part of card usage and balance while the investigation was happening. And it pointed out that it had credited Mr M's account on 17 and 19 December, and it had written to advise Mr M of this on 19 December. So it didn't uphold Mr M's complaint.

Mr M wasn't satisfied and complained to this service. He set out what had happened, and said that Regulation 61 of the Payment Services Regulations 2009 said that the payment service provider must immediately a) refund the amount of the unauthorised payment transaction to the payer and b) where applicable, restore the debited payment account to the state it would have been in had the unauthorised payment transaction not taken place. The transaction had debited his account on 21 November, and it wasn't until 17 December that he received an email saying one disputed transaction would be credited, but there was no mention of the other.

Mr M also said that AmEx hadn't complied with the FCA Principles for business, PRIN 7, which said that *"A firm must pay due regard to the information needs of its clients, and communicate information to them in a way which is clear, fair and not misleading."*

Mr M was also unhappy about the amount of time he'd had to spend on the phone to AmEx, and that it took him four times to ask for a formal complaint to be raised about the handling of the dispute. This was a separate complaint from his complaint that the statement had misled him.

Mr M said that he'd paid AmEx for transactions which were nothing to do with him, as a result of feeling stressed by AmEx's unclear and misleading communications, and he'd spent nearly three hours on phone and chat to AmEx, trying to get the matter resolved. As an outcome, he wanted AmEx to:

- acknowledge it was deficient in its handling of the dispute;
- acknowledge that the statement and app were misleading;
- correct its processes so it couldn't happen again; and
- pay appropriate compensation for the time spent resolving the issues and stress caused.

Our investigator didn't uphold Mr M's complaint. He set out the relevant regulations, which for transactions taking place in November 2022 are the Payment Services Regulations 2017, not the 2009 version. In the 2017 Regulations, *"the payment service provider must provide a refund ... as soon as practicable, and in any event no later than the end of the business day following the day on which it becomes aware of the unauthorised transaction."* The investigator explained the regulation within the 2017 Payment Services Regulations which deals with the authorisation of payments, and concluded that AmEx was required and allowed to establish whether the payment was authorised. It had chosen to do this by raising a chargeback. The investigator didn't think this had taken too long, and he also said that AmEx had paid Mr M an extra £15.97, for the undisputed transaction, as a gesture of goodwill on 19 December.

In relation to communication, the investigator didn't agree that AmEx's message was unclear. It had sent him messages that he didn't have to pay the amount, and the items in suspense were explained on the statement too.

Mr M wasn't satisfied. There were further detailed email exchanges between Mr M and the investigator. Mr M also sent in his December statement, which showed a number of amendments. The investigator explained that although Mr M's dissatisfaction with the December statement was linked to the original complaint, it was a new issue which he'd have to raise with AmEx before bringing to us.

Mr M said that his great concern was that by not paying the balance shown as outstanding in full, interest charges would result. He said there were clearly implications of not paying in full, as it might reflect on a credit file, as well as interest being applied if he didn't pay in full. He also said that the app used the term "due" not "outstanding" which reinforced the fact that it needed to be paid.

Mr M explained that his complaint wasn't about the money, but the principle, because AmEx had said it would adjust the balance on the statement but it didn't. He thought any reasonable person would assume that the amounts would have been deducted from the balance showing on the statement, so you wouldn't need to start doing manual calculations of your own to work out how much you're meant to be paying. He pointed out that anyone who always pays in full will always want to pay the full balance, and he believed that AmEx knew this and did it deliberately so that the retail customer carries the cashflow, not AmEx. In relation to the communication, he wanted this service to assess whether AmEx was wrong to say the statement was clear.

Mr M asked for an ombudsman's decision.

### **My provisional findings**

I issued a provisional decision on this complaint. This was because I'd come to a different conclusion to the investigator. Issuing a provisional decision gave both sides the opportunity to comment on it, by the date set, before I issued a final decision.

Before issuing the provisional decision, I considered all the available evidence and arguments to decide what would be fair and reasonable in the circumstances of this complaint. This is what I said in my provisional decision:

#### *Disputed payment*

I've quoted above the relevant regulation from the 2017 Payment Services Regulations, which deals with timescales for a payment service provider (here, AmEx) to refund the account holder for unauthorised transactions. Payment service providers need to investigate disputed transactions, and it's unlikely it will generally be able to do so in full by the end of the business day following the day on which it becomes aware of the unauthorised transaction. Here, AmEx chose a chargeback to determine whether the disputed payments were authorised or not. It was entitled to do that, as a chargeback is one way of investigating, though not the sole option. However, payment service providers will generally provide a temporary credit in these circumstances, informing the customer what they've done, and pointing out that if the outcome isn't decided in the customer's favour, the temporary credit will be re-debited.

I explained in my provisional decision that it wasn't entirely clear to me whether that's what AmEx did here, as the items on Mr M's statement are labelled not as credits but as being in suspense. It seemed most likely that what AmEx did, instead of issuing temporary credits, was to keep the items on the account, but informed Mr M that he didn't have to pay while the matter was under investigation – in other words, as a type of concession. In practice this came to the same thing as a temporary credit, but I appreciated that a temporary credit might have resulted in a different appearance on the statement and app. I'm not familiar with the detailed workings of AmEx's computer systems, and it's important to say that this service can't comment on a financial organisation's processes and procedures. That's the role of the regulator, the Financial Conduct Authority (FCA).

But I explained that I couldn't in any case say that AmEx failed to meet the requirements of the Payment Services Regulations in relation to the timing of a refund. That's because AmEx, or any other payment services provider, can't know whether or not a payment has genuinely been authorised – and is thereby entitled to the provisions of a refund within the set timescales – until it has investigated. I considered that the timescales here were reasonable for an organisation to have carried out that investigation in order to determine whether or not the payments had or hadn't been authorised by Mr M.

#### *Communication – November statement*

AmEx's 22 November email to Mr M said *"We have placed the disputed amount under review and therefore you are not required to pay the charge while it is under investigation. The balance on your next statement will reflect the amount under review. It may take up to 8 weeks to resolve the matter. We will contact you as soon as we have completed the investigation."*

I found that this was clear in terms of Mr M not being required to pay the charge. I didn't, however, think that *"reflect the amount"* was particularly clear. *"Include"* would have been a clearer verb in terms of what the account balance would show.

I understood, and sympathized with, Mr M's frustration that the November statement and app didn't show the amount he needed to pay. I particularly sympathised with his comments that anyone who pays their balance in full each month would always want to be very clear about the amount to pay. In practice, Mr M, who has told us his professional background, would be well able to work this out, but I appreciated that this is not the point.

However, Mr M's disputed transactions were in the event refunded. This isn't always the case. At the time of the November statement, the situation was that the disputed transactions had been correctly authenticated (authentication is the technical part of a payment, as opposed to authorisation). It would only be when the disputed transaction outcome had been determined that Mr M could be sure that AmEx was going to refund him. So the precautionary approach, for AmEx as the payment service provider, and for any customer, would be to include all correctly-authenticated transactions – until such time as they had been proven not to have been authorised. So while I did sympathise with Mr M's position, I couldn't say that AmEx was wrong to include correctly authenticated transactions, while it was investigating whether or not they had been authorised by Mr M.

I didn't comment on the December statement, because technically that would count as a separate complaint, and it is not demonstrably dealt with in AmEx's final response letter of 18 January 2023. If Mr M wishes to take this further, he will need to obtain AmEx's response on this statement.

#### *Complaint handling*

The investigator said that this service can't consider how AmEx handled Mr M's complaint. There are detailed rules about this, and we wouldn't be able to consider standalone complaint handling about something we're not looking at. But here, the complaint handling at issue is ancillary to the principle point of Mr M's complaint. So I found that this service could consider AmEx's complaint handling in relation to that point.

I recognised that Mr M was unhappy with many aspects of AmEx's handling of his complaint. He was unhappy about the length of time it took him on the phone and chat to deal with the disputed transactions; the fact he had to ask multiple times to raise complaints; and other aspects of handling. I agreed that the service Mr M received from AmEx was less than ideal. Mr M had said his complaint wasn't about money, but the principle that AmEx said it would

adjust the balance on the statement but didn't. AmEx had also refunded Mr M an extra £15.97. Nevertheless, I thought AmEx should pay Mr M a further £50 to reflect its handling of his complaint.

So my provisional decision was that I intended to uphold this complaint in part:

- For the reasons set out above, I sympathised with Mr M's dissatisfaction about the clarity of the November 2022 statement, but I considered it was a precautionary approach to include the disputed amounts until the investigation had concluded. It's not within this service's power to order AmEx to change its procedures in relation to statements;
- I intended to order American Express Services Europe Ltd to pay Mr M £50 compensation for the inconvenience of its complaint handling.

### **Responses to my provisional decision**

Mr M accepted the provisional decision.

AmEx didn't reply to the provisional decision by the date set for responses.

### **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 reconsidered, I consider that my provisional decision was fair and reasonable in all the circumstances of this complaint.

### **My final decision**

My final decision is that I uphold this complaint in part:

- For the reasons set out above, I sympathise with Mr M's dissatisfaction about the clarity of the November 2022 statement, but I consider it was a precautionary approach to include the disputed amounts until the investigation had concluded. It's not within this service's power to order AmEx to change its procedures in relation to statements;
- I order American Express Services Europe Ltd to pay Mr M £50 compensation for the inconvenience resulting from its complaint handling.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 22 September 2023.

Belinda Knight  
**Ombudsman**