

The complaint

Mr N complains American Express Services Europe Limited (AESEL) have discriminated against him, on the grounds of disability, when they declined his application for a credit card.

What happened

In late March 2023, Mr N completed AESEL's eligibility checker for a credit card and this involved detailing his income. After the checker said his application was very likely to be successful, Mr N decided to complete an application for the credit card – but it was declined. The reason Mr N was given for the declination was that his income was too low. Mr N was unhappy with this, so he raised a complaint.

AESEL were satisfied they considered Mr N's application correctly and disagreed their decision to decline it was due to discrimination. As such, they didn't consider they'd treated him unfairly. Mr N remained unhappy, so he brought his complaint to our service.

Our Investigator felt Mr N's complaint should be partially upheld. She explained she wasn't persuaded Mr N had been treated unfairly by the information provided from the eligibility checker, but she didn't think AESEL had assessed Mr N's application fairly. Our Investigator explained she didn't think AESEL had fairly considered the fact Mr N's income wasn't taxable – as such his gross and net income was the same. This meant his net income was greater than someone's gross pay that met AESEL's minimum income requirement. Because of this, she felt AESEL should remove the searches from Mr N's credit file and pay him £100 for distress and inconvenience.

AESEL accepted our Investigator's findings, but Mr N didn't agree. He explained he wanted his application reconsidered and a significantly higher award that was more in line with Vento guidelines.

Our Investigator wasn't persuaded to change her opinion, so Mr N's complaint was passed to me for a decision.

I issued my provisional decision on 22 March 2024. In this, I explained I was minded to uphold Mr N's complaint because I wasn't persuaded AESEL had considered his application fairly. To put things right, I said AESEL should:

- remove the hard search (for the March 2023 application) from Mr N's credit file;
- manually reassess Mr N's application; and
- pay Mr N £200 in recognition of the distress and inconvenience caused by their mistakes and handling of his concerns.

Both parties had until 19 April 2024 to respond. AESEL accepted my provisional decision and confirmed they had already removed the hard search from Mr N's credit file. Mr N also accepted my provisional decision – and he confirmed he now has a credit card with AESEL. However, he disagreed with the extent to which our service can make a finding of discrimination under the Equality Act.

While I've noted what Mr N has suggested about the limitations of our powers, my position remains the same. As such, my decision on his complaint hasn't changed.

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 considered everything, I'm upholding Mr N's complaint, for the reasons below.

Before I detail my findings in this case, it's important that I set out the remit of our service given the points Mr N has made regarding the application of legislation to his complaint. Our service is informal, and in turn doesn't have the same powers as the Courts. It's for this reason we cannot make a finding of discrimination under the Equality Act 2010 – that is something only the Courts can do. Our role is to make a finding on whether a consumer has been treated fairly and reasonably by a financial business. And to do this we take a number of things into consideration – such as good industry practice, rules, and legislation. So, while I cannot make a finding on discrimination in the way Mr N might want, I need to assure him that the Equality Act 2010 is something I've considered when investigating his complaint.

Eligibility checker

Mr N is unhappy his credit card application was declined despite AESEL's eligibility checker saying he was *"very likely to be approved"*.

An application for credit is never guaranteed to be approved. Businesses, like AESEL, take a number of factors into consideration before agreeing to lend. However, eligibility checkers can be a useful tool to help applicants determine the likelihood of being approved for lending.

Having looked at Mr N's results from eligibility checker, I can see his chance of approval was scored at 8.5 out of 10. So, he would have gone into the application process being aware there was a chance (even if it was a relatively low one) that he may not get the credit card.

I've also considered what information was available to Mr N when he completed the eligibility checker. I've seen the webpage explains applicants should read the terms and conditions before clicking submit. The terms and conditions are just over two pages long and at the top of the second page it says:

"2. ELIGIBILITY SCORE

...The Eligibility score does not guarantee that any card application made by you will be successful. A card application will be subject to further checks including fraud and additional credit checks as well as affordability assessments."

In light of this information, I can't agree AESEL's eligibility checker unfairly led Mr N to believe his application was guaranteed to be successful. Therefore, I'm not upholding this aspect of his complaint.

Assessment of Mr N's application

The evidence provided by both parties to this complaint demonstrates that the likely main cause of his application being declined was due to his level of income.

I don't think it's unusual for income to be a consideration in a business, like AESEL's, lending criteria. However, we would expect an applicant's financial circumstances to be fairly considered in line with this lending criteria. And that's the crux of this complaint – was AESEL's lending criteria fairly applied to Mr N's circumstances.

Neither party disputes that Mr N's annual income is lower than the overall figure in AESEL's lending criteria. However, AESEL's evidence has shown that the figure in their lending criteria is a person's gross annual income – meaning they're likely to receive less than this once tax has been deducted.

Mr N's income is derived from benefits, as such his gross and net income is the same. When you consider AESEL's minimum income requirement, it's more likely than not that Mr N's annual income is higher than the net income of a person with a salary that exactly matches the gross figure in the lending criteria. So, when considering this point, it's difficult to understand why AESEL maintain that Mr N doesn't meet the income aspect of their lending criteria.

AESEL has told us that Mr N was given the opportunity to verify his income but chose not to do so. However, I'm not wholly persuaded by their argument. I say this because I've seen their contact notes from the time, and they detail they'd consider manually reviewing his application if he confirms a higher income.

Mr N was never going to be able to confirm a higher income, so I can't agree with AESEL's assertion that he refused to co-operate with them. The way they posed this option to him, meant he was never going to be able to provide what they said they were willing to consider. Ultimately, telling Mr N that disregarded the key issue in this case which is that Mr N's gross annual income is the same as his net.

Given the above, I'm not satisfied AESEL has sufficiently demonstrated they fairly considered Mr N's application. I'm also not persuaded they did enough to alleviate his concerns after his application was declined.

As mentioned above, I do not have the power to make a finding of discrimination. Therefore, anything I award will be modest in comparison to what a Court might decide. But I do think AESEL needs to take steps to put things right.

In my provisional decision, I explained I expected AESEL should manually reassess Mr N's application for a credit card. However, in response to my provisional decision, Mr N confirmed he'd submitted another application with AESEL which was accepted. As such, this aspect of his complaint has now been resolved.

AESEL had already agreed to remove the hard search from March 2023, and I consider that was the right thing to do. And following my provisional decision, they confirmed this has been done.

I do consider AESEL could, and should, have taken steps to manually review Mr N's application when he raised his concerns. Because of this, I consider an award of £200 is fair to reflect the distress and inconvenience Mr N experienced. I consider this award fairly reflects the inconvenience Mr N experienced when trying to get his application reconsidered. It also takes into account the distress he felt when he believed his application was declined due to the fact he receives benefits – and I don't think it's unreasonable he felt that way.

I'm not minded to suggest a higher award than that described above because an application for credit is never guaranteed. In addition to this, raising a complaint comes with inevitable inconvenience and that isn't something we would ordinarily factor into an award.

For the reasons above, I'm upholding his complaint.

My final decision

My final decision is that I'm upholding Mr N's complaint about American Express Services Europe Limited (AESEL).

To put things right American Express Services Europe Limited (AESEL) should pay Mr N £200 in recognition of the distress and inconvenience he's experienced as a result of their handling his application for a credit card, and concerns.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 17 May 2024.

Sarrah Turay
Ombudsman