

The complaint

Mr B complains that American Express Services Europe Limited (AESEL) did not put in place the reasonable adjustment he asked them for.

Mr B is represented by his wife in bringing this complaint. But for ease of reading, I'll refer to any submission and comments she has made as being made by Mr B himself.

What happened

Mr B says he had never missed a payment on his Amex card until recently. He says this was after he was diagnosed with a chronic health condition which also significantly impacted his mental health. Mr B says that as he has been hospitalised on a number of occasions he has lost a lot of income directly because of this and he is classed as disabled under the Equality Act 2010. Mr B wrote to a debt charity who advised him to write to Amex with this information, which Mr B did, also sending them medical evidence. He asked Amex not to ring him as a reasonable adjustment, but to either email him or write to him.

Mr B says despite asking Amex not to ring him as a reasonable adjustment, they not only rang him, but also his wife (despite her not being a cardholder) on an almost daily basis. This caused his wife to break down in tears in front of their young child, who also became upset. Mr B wrote to Amex attaching his budget summary and an offer of what he could repay. He also requested again that they refrain from ringing both himself and his wife, but Amex still called them when they were both on their way to hospital.

Mr B says Amex gave him another call, but he was too distressed to talk to them and he gave his wife permission to speak on his behalf. He says she reiterated the reasonable adjustment for them not to ring Mr B (or herself), and to contact Mr B by email/letter, but the call handler insisted on continuing with the call. Mr B says the call handler wanted to discuss his budget, but Mr B had already sent this to them. Mr B made a complaint to Amex.

Amex partially upheld Mr B's complaint. They said the telephone number they rang was the telephone number they had on file for him. They said Mr B sent them a letter dated 23 December 2023, which explains his circumstances and that he asked not to be contacted by phone anymore. They apologised that after this letter he continued to receive telephone calls. They credited Mr B's account with £150 for the distress and inconvenience they caused him. Mr B brought his complaint to our service.

Our investigator partially upheld Mr B's complaint. She said Amex hadn't grasped Mr B's needs and they have let him down on more than one occasion, even though Mr B explained his health conditions to them. By Amex ignoring his needs she said this caused a great deal of upset to Mr B. Our investigator said Amex should directly pay Mr B the £150 they already credited to the account, pay him an additional £300 directly, and refund any interest or fees that had been applied to the account since 9 January 2024.

Mr B asked for an ombudsman to review his complaint as he said £5,500 would be proportionate compensation due to the impact this had (and still has) on himself, his wife, and his young child. He said Amex's actions were unlawful.

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.

Mr B has made a number of points to this service, and I've considered and read everything he's said and sent us. But, in line with this service's role as a quick and informal body I'll be focusing on the crux of his complaint in deciding what's fair and reasonable here.

Mr B has complained Amex failed to make reasonable adjustments (under the Equality Act 2010). I need to clarify that this service is unable to make findings on whether something constitutes discrimination as per the Equality Act 2010. This is because we are an informal free alternative to the courts, and only a court of law can make a legal finding based on the definitions set out within the act. So if Mr B wants a decision that Amex have broken the law, then he'd need to go to Court. However, I can consider whether I think the business has acted in a fair and reasonable manner, and in order to do that I will take a number of things, including the Equality Act 2010, into consideration.

Amex said in their final response to Mr B that they asked their financial difficulties department to not give Mr B outbound calls. So this is something which they can do – and should have done when Mr B wrote to them in December 2023 explaining his situation.

Looking at Amex's system notes that they provided our service, I can see that they constantly rang Mr B. Sometimes they got through to him, other times they left voicemails. So it would have been distressing for Mr B to get these calls, especially when he had asked for a reasonable adjustment from Amex, and this reasonable adjustment was something that Amex could facilitate as evidenced by their final response to him. So I can understand why the frequent calls would have been distressing for him, when he had been clear to them about the reasons for not ringing him.

While Mr B has said Amex rang his wife's telephone number and she isn't a cardholder, it does appear that Amex had both telephone numbers on his customer profile. Amex have said they have since removed this number. This number should have been removed when it was clear what Mr B's telephone number was and when she told Amex this wasn't Mr B's telephone number. As she was not a cardholder, there was no reason for Amex to ring this number once they were made aware that the separate number didn't belong to Mr B.

Mr B was caused further distress with the call he received on 18 January 2024, where the call handler continued the call even though he was made aware of the reasonable adjustment Mr B asked for. While the call handler may have been trying to assist Mr B to come to an acceptable arrangement, not only was there an oversight on not ringing Mr B, but he had already sent them his budget. And Amex were aware of his vulnerable status and the fact Mr B had told them that he was considered disabled under the Equality Act 2010.

Mr B had tried to engage with Amex, by explaining his situation, providing them with medical evidence, and sending them a budget planner. He also set out a proposal for a plan. So he was trying to be proactive in managing his debt at a time he was especially vulnerable and had constant hospitalisation around the time he was constantly getting calls from Amex. While Amex have explained they can't email a customer due to data protection, there was more they could have done to assist Mr B.

I say this as Mr B's letter dated 23 December 2023 to Amex asked them to hold action on the account for 30 days. I don't find this to be an unreasonable request. If they would have placed a hold for 30 days on the account as Mr B asked them to, then this would have allowed Mr B some breathing room at a time where he told them about his hospitalisations.

This would have also avoided the calls such as the distressing call he received on 18 January 2024.

This is also an action Amex could have taken when they did speak to Mr B on the phone (or his wife). But when Mr B told them he was in touch with a debt management charity, it appears the call handler was focused on the reference number which Mr B didn't have. This could have been an opportunity to put the hold on the account at this point.

I can also see on the system notes that even after Amex had issued their final response letter to Mr B they still rang Mr B. While this appears to be accidental, this would be distressing for Mr B, especially as he was told there would be no further calls, and Amex didn't honour what they told Mr B here. The notes show the phone rang twice before the call handler realised the note not to call him. And Mr B has told us in March 2024 he still got a call from Amex.

So I've considered what would be a fair outcome for this complaint. While I've read everything Mr B has said about the impact of what happened on his wife and his young child, our rules only allow me to consider distress and inconvenience awards to an eligible complainant. Here, Mr B is the only eligible complainant on this complaint as the Amex card is solely in his name. So I'm unable to consider any distress and inconvenience awards to his wife or young child as a result of what happened here.

I've considered the £5,500 compensation that Mr B wants for the impact of Amex's actions. But I must explain to him that our awards are not designed to punish a business or to make it change the way they act in order to protect other customers in the future. That is the role of the regulator. We sometimes award compensation if we feel that a business has acted wrongfully and therefore caused distress and inconvenience to their customer over and above that which naturally flows from the event.

I agree with our investigator that due to Mr B's financial situation that the compensation Amex did pay Mr B (£150) should be paid directly to Mr B as opposed to reducing his balance. She has also suggested a further £300 compensation to be paid directly to Mr B due to the impact of their actions. So this would total £450 compensation for distress and inconvenience to be paid directly to Mr B. This is in line with our awards for what happened here. So I do think a total of £450 for distress and inconvenience is fair and reasonable here. Mr B should be aware that because Amex will be taking the £150 back out of his account to pay him, that this means his outstanding balance will increase by £150.

Our investigator also said that Amex should refund interest and charges that they charged to Mr B's account from 9 January 2024 (the date Amex received Mr B's letter). This is not something I would have asked Amex to do, as I can't see that they have made an error with the charges or fees applied to the account (although a hold on the account may have prevented some of these fees/charges). But as Amex agreed to do this, I'm not minded to interfere on this point. So it follows Amex should put things right for Mr B.

Putting things right

Our investigator has suggested that American Express Services Europe Limited (AESEL) does the following, which I think is reasonable in the circumstances:

- Pay the £150 already credited to the account directly to Mr B;
- Pay an additional £300 directly to Mr B for distress and inconvenience;

- Refund any interest or fees which have applied to the account since 9 January 2024.

My final decision

I uphold this complaint. American Express Services Europe Limited (AESEL) should settle the complaint in line with the instructions in the *“putting things right”* section above.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 27 May 2024.

Gregory Sloanes
Ombudsman