

The complaint

Mr K is unhappy that American Express Services Europe Limited (“AmEx”) closed his credit card account and transferred the resulting debt to a debt collection agency (“DCA”) without his having an opportunity to address AmEx’s concerns.

What happened

Mr K held a personal credit card account with AmEx. In June 2023, Mr K received a letter from AmEx informing him that his credit account was being closed with immediate effect. The letter didn’t explain why AmEx were closing his account, and the balance outstanding on Mr K’s account at the point of closure was approximately £11,000.

A few days later, Mr K received another letter from AmEx, informing him that his credit account debt had been transferred to a DCA, whom would be in touch with Mr K shortly and with whom Mr K should liaise with moving forwards to arrange repayment of the outstanding account debt. Mr K wasn’t happy that AmEx had closed his account or that they’d then transferred the debt to a DCA. And he also wasn’t happy with the effect the closure of his AmEx account had had on his credit file. So, he raised a complaint.

AmEx responded to Mr K but didn’t feel that they’d done anything wrong by terminating the account as they had or by transferring the outstanding account balance to a DCA. And AmEx noted that their actions were permitted by the terms and conditions of the credit account that Mr K had held with them. Mr K wasn’t satisfied with AmEx’s response, so he referred his complaint to this service.

One of our investigators looked at this complaint. But they didn’t feel that AmEx had acted unfairly in how they’d managed the situation and so didn’t uphold the complaint. Mr K remained dissatisfied, so the matter was escalated to an ombudsman for a final decision.

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 K is unhappy that AmEx closed his credit account without him being able to discuss their concerns about his account with them. And Mr K would like this service to instruct AmEx to reinstate his account as if it had never been closed and remove the adverse reporting regarding his account from his credit file.

But it must be acknowledged that having a credit account isn’t a right that a consumer has. Rather, a consumer must first apply to a credit provider for a credit account. And, if the consumer’s application is successful and if they are granted a credit account by a credit provider, the consumer must then manage and use the account that they’ve been given in accordance with the terms and conditions of the account – which the consumer must accept and agree to as a part of the account application and opening process.

In this instance, AmEx say that Mr K didn’t use his credit account in accordance with the

terms of the account. Specifically, AmEx say that Mr K used the credit account, which was a personal account held in his name, to pay a business that he owns. Such payments aren't permitted by the terms of the account, which include the Mr K could only use his personal credit account for his own personal use. This is as follows:

"Using the card:

You may use the card up to your credit limit for purchases and, if we tell you, for balance/money transfers, cash advances and other types of transaction we may allow.

The above confirms that usage of the personal credit account is limited to personal matters and doesn't include any indication that an account holder using the card to make payments to a business owned by that account holder is permitted or acceptable.

One reason for this is that, by making payments to his business, Mr K was accruing personal debt on behalf of his business. This means that Mr K was effectively using his personal credit card to provide credit to his business – credit that his business was not then legally accountable for, because Mr K himself had taken on the debt. But AmEx didn't agree to provide any credit to Mr K's business, only to Mr K himself.

Accordingly, AmEx consider such usage of a personal credit account to be an abuse of that account and out of accordance with the credit agreement that was accepted by the account holder. AmEx's position here doesn't seem unreasonable to me, and I feel that any concerns AmEx have about such account usage are valid.

When Mr K spoke with AmEx about his account usage in May 2023, he conformed to them that he had used the card to pay his business. By confirming this fact, Mr K confirmed that he had used the account out of accordance with the terms of the account. And because unacceptable usage of the account had been confirmed, AmEx made the decision to close Mr K's account with immediate effect.

AmEx's terms and conditions permit the immediate close of an account in certain circumstances as follows:

"We may end this agreement immediately if:

...

- You seriously or persistently breach this agreement.*

...

- We have reasonable grounds to believe that you're unable or unwilling to pay your debts when due."*

AmEx feel that both clauses listed above apply in this instance. Firstly, they note that Mr K's unauthorised usage of the account was a breach of the agreement. And secondly, they feel that the fact that Mr K was having to use a personal line of credit to make payments to his business indicated that Mr K's overall financial position was likely to be stained and that he might not be able to repay his personal credit account balance if requested.

AmEx's rationale here doesn't seem unreasonable to me, and it appears to be supported by the fact that when AmEx did close Mr K's credit account and demanded immediate payment of the full outstanding balance, he wasn't able to make such payment and entered into a

long-term repayment plan.

All of which means that I don't feel that AmEx have acted unfairly by making the decision to close Mr K's credit account with immediate effect as Mr K maintains. This is because Mr K was using the account to make pay a business he owned, which isn't permitted by the terms of the account. And because the terms of the account also include that AmEx can close an account with immediate effect in such circumstances.

Mr K is unhappy that AmEx didn't give him an opportunity to address their concerns before closing his account. But Mr K had confirmed that he had used the account in a manner that was unacceptable to AmEx and out of accordance with the terms of the account. As such, I don't feel it was unfair or unreasonable for AmEx to have made the decision to close Mr K's account as they did. And I feel that it's implicit in AmEx's decision to close Mr K's account that there was nothing Mr K could have explained to AmEx that would have given them cause to act differently, given the confirmed unacceptable usage of the account by Mr K.

Mr K is also unhappy that, after AmEx closed his account, they transferred his outstanding debt to a DCA, or with how AmEx have reported the closed account to his credit file. But AmEx's right to transfer Mr K's debt to a DCA is included in the terms of the credit account, which Mr K accepted when opening the account. This is as per the 'assigning your agreement' section of the account terms. And AmEx didn't require any further acceptance or authorisation from Mr K to transfer his debt to a DCA beyond his acceptance of those terms.

Additionally, I haven't seen anything to suggest that AmEx have made inaccurate reporting regarding this credit account to Mr K's credit file. And I'm satisfied that AmEx have fairly and correctly reported the closure of Mr K's account and the subsequent debt repayment agreement he made with a DCA.

I realise this won't be the outcome Mr K was wanting. But it follows from all the above that I won't be upholding this complaint or instructing AmEx to take any further or alternative action here. I hope that Mr K will understand, given all that I've explained, why I've made the final decision that I have.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 August 2024.

Paul Cooper
Ombudsman