

The complaint

Miss B complains that American Express Services Europe Limited (AESEL) mis-handled her credit card account, and unfairly closed it, after she fell into financial difficulty.

What happened

Unfortunately, Miss B fell into financial difficulty and her account went into arrears. On 8 March 2023, the government's Debt Respite Scheme (Breathing Space) wrote to Miss B and AESEL to confirm the debt she owed it formed part of the scheme. The scheme confirmed AESEL couldn't take any action against her for the debt until the Breathing Space had finished. It said it would notify AESEL when it ended.

After that time, AESEL wrote to Miss B on several occasions asking her to repay the money she owed. On 24 May 2023 it cancelled her account. When Miss B complained, it accepted it hadn't written to her giving sufficient advance notice of the cancellation, as per its process. By way of an apology, it offered her £75.

Unhappy with AESEL's response, Miss B brought the complaint to this service. She felt it had closed her account prematurely and without giving her sufficient time to pay the debt. Our investigator looked into the complaint but didn't recommend that it should be upheld. Essentially, they felt AESEL had adhered to the terms of the Breathing Space and had treated Miss B fairly in closing the account when it did.

As Miss B didn't agree with the investigator's findings, the complaint was passed to me to review afresh. On doing so, I issued a provisional decision upholding the complaint. I considered that, from the available evidence, AESEL had ended the Breathing Space prematurely, causing Miss B financial and non-financial loss. I set out my recommendation for how AESEL should put things right for her.

I asked the parties to respond with their further comments and evidence before I reconsidered the complaint and issued a final decision. AESEL confirmed its acceptance of my provisional decision.

Miss B added that she felt AESEL had treated her arbitrarily even after she explained about her mental health. This had caused her much stress and anxiety. She said AESEL had mentioned at one point that it could write off her debt – she felt it should do so.

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 done so, I uphold this complaint. I'll explain why.

Fundamentally, Miss B entered into an agreement to repay AESEL in relation to her account. This meant her paying at least a minimum amount on an agreed date each month for the term of the agreement. This was all set out in Miss B's credit agreement. It's not in dispute

that she didn't comply with it.

But AESEL was prevented from treating Miss B as it would any other customer – albeit one that, like her, was vulnerable – as soon as it was notified of the debt being moved into the Breathing Space scheme.

As in my provisional decision, I think it would be helpful to very briefly set out my understanding of the Breathing Space scheme and, in particular, what this meant for AESEL as Miss B's creditor. In summary, the scheme affords individuals legal protection from their creditors. Miss B was in a mental health crisis (MHC) breathing space, as opposed to a standard Breathing Space. This meant, among other things, she was afforded stronger protections and for longer, at 30 days in addition to the length of her MHC treatment, as opposed to up to 60 days overall for standard Breathing Space.

Among other things, for the duration of a MHC Breathing Space – which is the period right up until notification that the Breathing Space has ended – creditors must stop:

- The debtor having to pay certain interest, fees, penalties, or charges for that debt
- Contacting the debtor to request repayment of the debt, unless permission from the court's been obtained

With that in mind, I've considered the actions of AESEL from 8 March 2023 in deciding whether it treated Miss B fairly. Overall, I don't believe AESEL has treated her fairly. I say that because, as it accepts, it failed to adequately inform Miss B in advance of the cancellation of the account. For that, AESEL apologised and sent Miss B a cheque for £75. That, I think in the circumstances, was a reasonable response for that aspect in itself. And I don't think the Breathing Space meant AESEL couldn't still close the account if it chose to do so.

I note the credit agreement says AESEL can end it by giving two months' notice or – in some cases – with immediate effect. This includes when minimum payments repeatedly fail to be made and if there's been persistent breaching of the agreement. As AESEL didn't close the account until the deadline it gave had passed, and had made Miss B aware of the deadline, I'm satisfied it was entitled to close it when it did.

That said AESEL's maintained throughout the course of the complaint, and continued to do so up until my provisional decision, that the Breathing Space came to an end. In April 2024, it indicated it ended in September 2023 following an offer of repayment from Miss B's debt management company. On the other hand, Miss B's suggested to us that the Breathing Space hadn't ended and was still running.

Whether the Breathing Space is still running and/or ascertaining its end date (if it ended) is, in my view, important in the context of Miss B's complaint. That's because while the Breathing Space was still running, AESEL shouldn't have taken some of the actions I've mentioned above – specifically, contacting Miss B to request payment. AESEL informed Miss B of this much itself when it wrote to her on 9 March 2023.

Despite that, I can see that on 6 May 2023, AESEL wrote to Miss B to serve notice of default on the account. It told her she'd breached the terms of the agreement and that, to remedy this, she needed to pay £85 before 25 May 2023. If payment wasn't received by then, it reserved the right to terminate the agreement, serve notice demanding payment and so on. It reminded her that the outstanding balance was £1,143.51.

On 26 May 2023, AESEL sent Miss B a final demand and notice of termination letter. In it, AESEL formally demanded payment of the full outstanding balance now that it had closed

the account. It said it would continue to charge interest on the balance in full. AESEL said the debt may now be passed to a debt collection agency or AESEL department that would be in contact with Miss B regarding the account going forwards.

On my instruction, the investigator recently tried to obtain further information from AESEL, Miss B and the service that arranged for her to have Breathing Space, about its terms. That service replied to confirm the Breathing Space was still active and continued to run indefinitely. It said creditors would be notified when the protection ended and enforcement could resume.

As such, I'm satisfied that Miss B's Breathing Space was still in place when AESEL wrote to Miss B to demand payment and sought to enforce the agreement. In taking this action, I find that AESEL didn't treat Miss B fairly or sympathetically. I'm left in little doubt, from what she's told us about her circumstances and has restated recently, that this caused her significant distress and inconvenience at what was already a very difficult time for her. As AESEL was aware, Miss B was struggling with her finances and was more vulnerable than most due to her poor mental health. Yet it told her in its letter of 9 March 2023 that the Breathing Space would only last for 60 days. I haven't seen anything to show why AESEL believed that to be the case.

Taking all of this into account, I'm still satisfied that AESEL should pay Miss B much more than the £75 it's already paid her as compensation for distress and inconvenience. I've reconsidered the amount I should award in light of the available information and Miss B's response to my provisional decision. I've continued to take account of this service's published approach to compensation for such losses in reaching the amount that I have.

I remain of the view that AESEL should also put things right for Miss B in treating the Breathing Space as having ended when in fact it was still running. Miss B's asked that AESEL write off her debt, but I don't require it to do so in the circumstances. That's not to say AESEL shouldn't consider doing so if it's willing to, but I can't fairly justify making such an award taking everything into account.

Putting things right

AESEL should:

- Rework Miss B's account to reflect that her Breathing Space didn't end when AESEL believed it did, and was in fact still running. Any interest, charges, fees and so on that were unfairly added should be removed. If Miss B's paid more than she should have in settling the account, the surplus should be repaid with 8% simple annual interest† from the date of payment by Miss B to the date of repayment by AESEL; and
- Amend Miss B's credit history to reflect that her Breathing Space didn't end when AESEL believed it did, and was in fact still running. Miss B shouldn't be adversely affected by AESEL's unfair actions; plus
- Pay Miss B £425 as compensation for the impact of the distress and inconvenience it's put her to. That's in addition to the £75 it's already offered and/or paid her.

† HM Revenue & Customs requires AESEL to take off tax from this interest. AESEL must give Miss B a certificate showing how much tax it's taken off if she asks for one.

My final decision

For the reasons given, my final decision is to uphold this complaint. I require American Express Services Europe Limited to put things right for Miss B as explained above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss B to accept or reject my decision before 14 June 2024.

Nimish Patel
Ombudsman