

The complaint

Mr C complains that American Express Services Europe Limited (AESEL) withdrew his account, and provided unclear information about its withdrawal.

What happened

Mr C held a charge card with American Express Services Europe Limited (AESEL) (AmEx). Mr C lives on one of the Crown Dependencies. In August 2023, AmEx contacted Mr C by email to say it was terminating his account unless he could provide a UK address, as it would no longer be offering that type of account outside of the UK. AmEx gave Mr C 62 days' notice.

Mr C contacted AmEx via its webchat facility to query this, as he'd seen local news reports which said that existing AmEx customers would be able to retain their accounts. AmEx's agent incorrectly informed him that his account would not be closed.

Three days later, Mr C called AmEx as he received letters which said the account would be terminated. AmEx's agent called Mr C back the same day and told him the correspondence he'd received was correct, and the account would be closed.

Mr C complained. AmEx accepted it had provided incorrect information and offered £150 by way of apology for any distress and inconvenience caused. Mr C wasn't satisfied with AESEL's response and referred the complaint to our service.

One of our Investigators considered AmEx's offer and thought it was a fair way to put things right. Mr C disagreed. In summary, he said that he thought AmEx was in breach of the Consumer Duty. He said that he'd been trying to deal with the issue while on holiday and had been caused a great deal of stress. He thought that £500 would be a fair reflection of the distress and inconvenience caused to him.

I issued a provisional decision, in which I explained that I'd reached the same conclusion as our Investigator but for different reasons. AmEx said it accepted my provisional decision. Mr C said that he thought my provisional decision was factually incorrect as he was aware of many friends and colleagues living in the Crown Protectorate who had retained their AmEx Platinum cards despite not having a UK address.

The case now comes to me to issue 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.

In my provisional decision, I said:

"AmEx has a broad remit to decide who it will offer accounts to, and with whom it will

continue a customer relationship. But, where it chooses to terminate an agreement, it needs to do so fairly, and in line with the relevant law as well as the terms and conditions of the account. As the charge card was an open ended agreement, under s98a(3) of the Consumer Credit Act (CCA), AmEx needed to give Mr C at least two months written notice of termination of the account.

AmEx told Mr C it required account holders to have a UK address as “Unfortunately, like other providers in the industry, our UK consumer and small business Cards, and their benefits, are designed for UK residents”.

Mr C has told us he believes that other AmEx customers, also resident in the Crown Dependencies, have been able to retain other types of accounts, such as some credit card accounts. So he believes he has been treated unfairly and inconsistently with other customers. Mr C believes that AmEx is in breach of the Consumer Duty as he believes he’s being treated differently to other customers living in the same crown dependency, and also to customers living in the UK.

AmEx has confirmed to us it has withdrawn accounts from all customers living outside the UK, who could not provide a UK address. Though if customers were able to provide a UK address, they could retain their accounts.

The terms and conditions for the account state:

“This agreement is open ended and has no fixed duration. You and we can end it without giving any reason ...

We can do this by giving you at least two months’ written notice ...”

I think that AmEx’s decision to withdraw services from customers who didn’t have a residential address in the UK was a legitimate exercise of its commercial judgment. The Financial Conduct Authority (FCA) guidance to the Consumer Duty says “Nor should firms withdraw products or services from the market or individual customers without considering the Duty and the impact this could have on customer outcomes.” I appreciate that, as part of the Consumer Duty, the regulator is looking for AmEx to avoid causing foreseeable harm to its customers, and to support them to pursue their financial objectives.

That said, I do not think the Consumer Duty prevents AmEx from exercising its commercial judgment to withdraw its services from certain markets, or portions of the market, in the way it has here.

The FCA guidance to the Consumer Duty says that the Duty does not “prevent a firm from withdrawing a product or service. However, a firm can cause foreseeable harm or frustrate the objectives of its customers in the way it does so. For example, if a firm withdrew a product or service abruptly or without considering the effect on the consumers who are impacted this could cause foreseeable harm. Where a firm is planning to alter or withdraw a product or service, they should consider whether it could lead to foreseeable harm for their customers or a specific group of customers (such as customers with characteristics of vulnerability) and take steps to mitigate the impact of the potential harm. This could mean not withdrawing the product or service too abruptly, allowing time and support for customers to find suitable alternatives and ensuring that they communicate any changes in a timely, clear and sensitive manner. This should include setting out what it means for the consumer, communicating alternative solutions, and the consequences to any consumers of not acting.”¹

Overall, I think AmEx has acted fairly and in line with the terms and conditions in choosing to

withdraw the account. I do not think Mr C has been treated differently to other customers in similar circumstances to him – that is, living in a Crown Dependency and unable to provide a UK address.

I'm also satisfied that by contacting Mr C by email and letter to provide 62 days' notice of the withdrawal of the account, AmEx gave the relevant notice period in line with the terms and conditions of the account, and the provisions of the CCA. Mr C's account was a charge card, meaning the full statement balance was due to be repaid each month. I think that the amount of notice AmEx gave meant that Mr C had a reasonable period of time to make other arrangements – supporting him to pursue his financial objectives and avoiding foreseeable harm to him. Given this, I don't think the Consumer Duty guidance means AMEX had to do anything more than it already has done here

It's very unfortunate that there was conflicting information provided to Mr C via Amex's webchat facility. Mr C thinks this was a breach of the Consumer Duty.

Prior to the Consumer Duty coming into force, the FCA generally expected firms to provide consumers with clear, fair and not misleading information. In this particular instance, I think Consumer Duty reinforces – rather than amends – this expectation.

It's also unfortunate that local news reports said that existing customers would be able to keep their accounts. However, I don't think I can reasonably hold AmEx responsible for this as the news reports were not within its control.

AmEx accepts it provided Mr C with incorrect information. So, it falls to me to decide whether its offer of £150 is a fair way to reflect the distress and inconvenience caused to Mr C.

I've thought carefully about what happened, and the impact Mr C has said the situation had on him. I'm also conscious that AmEx corrected the incorrect information given to Mr C within a relatively short period of time. I appreciate there was further communication between AmEx and Mr C thereafter, but throughout this communication it consistently informed him that the account would be closed.

Overall, taking everything into account, I think AmEx's offer of £150 is a fair way for it to put things right."

I've read the full file again, and considered what Mr C has said.

As I explained in our provisional decision, AmEx has told us it has withdrawn all accounts from customers in the Crown Protectorate who were unable to provide a UK address. Mr C says he knows individuals who've been able to retain their accounts, and who he says don't have a UK address.

I haven't seen anything other than Mr C's anecdotal evidence that any residents of the Crown Protectorate have been able to retain their account without a UK address.

But even if that were the case, it doesn't oblige AmEx to make a different decision in respect of Mr C. It isn't unfair, in itself, to provide account facilities to one customer while declining to do so to another. I think AmEx has acted fairly and in line with the terms and conditions – as well as the relevant statutory provisions – in withdrawing Mr C's account. I say this because the terms and conditions of the account say it may be withdrawn 'for any reason', and AmEx gave Mr C 62 days' written notice in line with the terms and conditions and under s98a(3) of the Consumer Credit Act.

So I don't think it's reasonable to ask AmEx to do anything further to put things right.

Putting things right

For the reasons I've explained, I think AmEx's offer is a fair way to resolve the complaint.

My final decision

My final decision is that I uphold this complaint. To put things right, American Express Services Europe Limited (AESEL) should pay Mr C £150 as it's offered to do.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 4 July 2024.

Frances Young
Ombudsman