

The complaint

Mr D complains that American Express Services Europe Limited (AESEL) closed his credit card account and referred it to a collection agency.

What happened

I issued a provisional decision setting out what had happened and what I thought about the complaint. I've copied the relevant parts of that decision below – and they form part of this final decision.

Mr D successfully applied for a credit card account with American Express (AmEx) in December 2022, with a credit limit of £15,000. In March 2023, AmEx told Mr D it would carry out a review of the account and suspended it while the review took place. In June 2023 AmEx told Mr D that following its review his account would close in 60 days, and that it would be referred to a third-party collection agency. It said Mr D would need to arrange to repay the balance on the card with the third-party.

Mr D was unhappy with AmEx's decision. He said he'd only had the account for three months before AmEx suspended it, and that during that time he only borrowed around one third of the total limit, and always made repayments in line with the terms of the agreement. He said it wasn't fair for AmEx to close the account when he hadn't done anything wrong. He said he felt humiliated by the experience. He was also unhappy with how long AmEx's review took, and said he was spoken to rudely by AmEx's staff when he called to ask about the process. He didn't want to deal with the third-party agency, and asked to make payments to AmEx directly.

AmEx didn't agree it had acted unfairly. It said it was within its rights under the terms of the agreement to review the account and give Mr D notice that it would be closed. It said it was standard practice for closed accounts to be referred to third-parties to collect payments on its behalf. It also noted that Mr D hadn't made any payments on the account since it was closed. AmEx did accept that there had been instances of poor service and offered Mr D £50 to put things right.

Mr D referred the complaint to this service. One of our Investigators considered the complaint but didn't uphold it. They said AmEx's review was triggered by Mr D's spending pattern on the card. They said AmEx acted fairly by gathering evidence from him to assess his circumstances against its criteria before making the decision to close the account. They also said Mr D's concerns about how long the review process took and how AmEx spoke to him over the phone was referred to us out of time.

Mr D didn't agree and asked for the complaint to be passed to an Ombudsman for a final decision. He said AmEx failed to show that he'd acted outside the terms of the agreement at any point. He also said he chose AmEx over other lenders because of the interest rate and other benefits – and by the time the account closed it was no longer possible to find a low rate with a different lender. He also said it wasn't possible for him to make payments on the account, as AmEx had withdrawn his access to online and telephone payment options. He didn't think it was fair for any missed payments to be reflected on his credit file and asked for

all interest to be waived and for total compensation of £8,000.

I previously issued a decision setting out what parts of Mr D's complaints we can – and can't – consider. In my decision, I said we couldn't consider Mr D's complaint about the following issues, as they were referred to us late:

- *The length of time the account review took, and the fact that Mr D's account was suspended during the review*
- *The information provided to Mr D over the phone up until 22 May 2023, and the way those calls were handled.*

This included AmEx's offer of £50, made under the original complaint. But I said we could consider Mr D's remaining concerns.

What I've provisionally 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.

Under the terms of the credit agreement, AmEx can end the agreement at any time with two months' written notice – and isn't required to give a reason. It can also refer the agreement to third-party agencies. I need to decide whether it did so fairly in this case.

AmEx says it decided to carry out a review because it had concerns about how Mr D was managing the account. I asked AmEx to provide further detail about the criteria it takes into account when deciding which accounts to review. AmEx has provided some information about why it decided to review Mr D's account – but hasn't shown what criteria would normally cause an account to be reviewed. This is significant – because I haven't seen anything to suggest that Mr D was acting outside the terms of the agreement. When AmEx started its review, the balance on the account was £5,136.64 – significantly below the credit limit of £15,000. And Mr D had paid at least the minimum amount due on the account each month until the time he was notified of AmEx's decision to close it.

As Mr D was not in breach of the agreement – and had only been using the card for three months – I'd expect AmEx to be able to clearly demonstrate why his use of the account prompted a review. I'm not satisfied it's done so here. So, I don't think AmEx has shown why the review was necessary or fair.

I've also considered AmEx's decision to close the account. AmEx has explained the main reason for its decision. I'm not able to share this with Mr D as it's commercially sensitive – but I have considered it. As part of its review, AmEx asked Mr D for bank account statements – which AmEx relied on in reaching its decision. Mr D has provided these statements – as well as a statement from when the account was opened. Based on these, I can't see that Mr D's financial situation had significantly changed between AmEx agreeing to the lending and its decision to withdraw it.

I asked AmEx for a copy of the original application details, as well as details of the criteria it relied on when agreeing to the lending and when closing the account. AmEx hasn't been able to provide this information. It says it no longer holds the original application data – but that the application would have passed its automated checks. It didn't ask Mr D for any bank statements or other supporting documents at the time. It also says its lending criteria are dynamic and variable – so it hasn't been able to provide any evidence of the criteria it relied on here.

Taking this into account, I'm not satisfied AmEx acted fairly when it decided to close Mr D's account – or that its decision was made in line with its usual process. The decision to close the account was based on Mr D's financial circumstances – but AmEx had been willing to offer credit to him a few months earlier. I think there are a few reasons this could happen, including:

- Mr D's financial circumstances changed, and he no longer met AmEx's lending criteria,*
- The information provided by Mr D when applying for the account was found to be incorrect, or;*
- AmEx's lending criteria changed, meaning it was no longer able to offer credit under the terms previously agreed.*

AmEx hasn't been able to demonstrate that any of these circumstances applied here – or that there was any other reason for it to change its mind about its decision to offer a credit facility within such a short period of time. So, I can't reasonably conclude that AmEx has treated Mr D fairly by doing so – or that it acted in line with its own processes. It follows that I don't think it was reasonable for AmEx to refer the account to a third-party collection agency – as Mr D had maintained payments in line with the agreement up until when the account was closed.

I must stress that I'm not suggesting AmEx isn't within its rights to decide who it wants to lend to. But I'm not satisfied AmEx has demonstrated that it treated Mr D fairly by carrying out a review or closing the account so soon after it agreed to the lending.

No payments have been made on the account since July 2023. Mr D says this is because AmEx withdrew his access to online and phone payment options. He said he has no way of making payments – and wasn't aware that a third-party had been appointed for several months after the account was closed.

AmEx told Mr D on 12 June 2023 that his account would be closed in 60 days – so on 11 August 2023 – and that its collections team would contact him about making further payments after that date. But it wasn't until 28 August 2023 that AmEx first told Mr D that the account had been passed to a third-party collection agency and that payments would need to be made to them.

This meant that between 11 August 2023 and 28 August 2023, Mr D was waiting to be told who to make his payments to – but a payment was due during this period. As far as Mr D was aware his account was closed, and he could no longer pay AmEx directly. Because AmEx didn't provide him with these instructions until after the payment was due, he couldn't have reasonably made it on time. So, I don't think AmEx should record adverse information about this payment being missed to credit reference agencies – as Mr D could not have reasonably made the payment when it was due.

But I do think Mr D could have resumed payments after 28 August 2023. AmEx's letter outlined that the third-party would be responsible for collecting the outstanding balance, and that they'd be in touch with Mr D directly. They also provided the third-party's contact details. The third-party has provided details of its contact with Mr D, including its call notes. From these, I'm satisfied they made several attempts to contact Mr D – and that he responded to say he didn't wish to deal with them.

While I agree that AmEx didn't treat Mr D fairly when referring the account to the third-party, this doesn't mean Mr D wasn't required to make payments on the account. Mr D says he

didn't receive correspondence from the third-party – but he had been provided with the third-party's contact details, and he had contact with them over the phone on at least one occasion. So he could have contacted the third-party to make payments on the account after 28 August 2023. AmEx is required to report accurate information to credit reference agencies. As Mr D hasn't made any payments on the account since 28 August 2023, AmEx was entitled to record that information.

As I understand it, AmEx has not yet recorded a default on Mr D's credit file in relation to the account – but has recorded missed payments while he hasn't been paying. AmEx has paused collections activity while this service has investigated the complaint. If AmEx intends to register a default in future, I'd expect it to consider whether that default ought to be backdated to take into account when arrears first started to accrue. And, if AmEx do default Mr D's account and he thinks this was done unfairly, then he can raise a new complaint about that.

Mr D says AmEx should not continue to charge interest on the account due to its errors – but I haven't seen anything to suggest AmEx isn't entitled to apply interest to the outstanding balance in line with the account terms. Mr D still owes the outstanding balance regardless of whether the account itself is open – so AmEx can charge interest on that amount in line with the terms of the agreement.

To summarise, I don't think AmEx has shown that it treated Mr D fairly when it decided to carry out a review of his account or when closing it. Discovering that his account was going to be closed so soon after it had been opened – and that the account had been passed to a collection agency - caused unnecessary frustration and disappointment to Mr D. But I don't agree with Mr D that AmEx has incorrectly recorded information about the account with credit reference agencies – with the exception of the missed payment in August 2023. I intend to require AmEx to pay Mr D compensation to recognise the distress and inconvenience its handling of the situation has caused.

Mr D has asked for a total compensation payment of £8,000. I need to consider the impact AmEx's error had on Mr D – and having done so I don't agree that the amount Mr D has requested reflects the impact of AmEx's errors here. Instead, I think £250 is a fair reflection of the distress and inconvenience AmEx has caused.

I also think AmEx should agree to deal with Mr D directly to agree a suitable repayment arrangement, instead of through its third-party. This is because the account was only referred to the third-party as a consequence of AmEx's decision to close it.

Responses to my provisional decision

Both AmEx and Mr D provided further comments in response to my provisional decision.

To summarise, Mr D said:

- While he agrees with my conclusions about the errors AmEx made, he doesn't agree with the level of compensation. He said AmEx should be punished sufficiently for its errors and requests a minimum of £5,000 compensation.
- He reiterated that AmEx caused him and his family significant distress and inconvenience over a long period of time, and that his credit file has been severely impacted as a result of AmEx's actions. This has affected his ability to apply for credit in future.
- His agreement was with AmEx, and he never agreed to make payments to the third-party agency – which is why he stopped making payments.

- AmEx ought to have stopped reporting negative information to credit reference agencies (CRAs) after he made a complaint.
- He doesn't intend to pay any interest on the account because of AmEx's errors.
- Because he doesn't know why his account was closed, he can't be sure that AmEx hasn't discriminated against him. He's concerned that the decision was made because of his country of birth.

AmEx made the following comments:

- The activity on Mr D's account indicated a risk – specifically that the account may not have been affordable.
- It could not have anticipated Mr D's use of the account when he applied for it.
- The information Mr D provided following the review did not meet its internal risk criteria to support further lending – so it gave appropriate notice to close the account.
- While AmEx doesn't usually manage the collection of overdue accounts in-house, it's willing to recall Mr D's account on this occasion and agree an affordable payment plan with him directly. It noted that if payment isn't received following an agreement being made, the account may be re-assigned to a collection's agency.

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.

I've reconsidered Mr D's complaint in light of the responses from both parties. Having done so, my overall conclusion on Mr D's complaint remains the same. I'll address Mr D and AmEx's responses in turn to explain why.

Mr D's comments

I'd like to reassure Mr D that I carefully considered all of the relevant circumstances and the information he provided when considering his complaint. I don't doubt that his experience with AmEx has caused him a lot of stress and upset. My role here isn't to fine or punish AmEx where it makes an error – but to determine how it should put things right, taking into account what is fair and reasonable. With that in mind, I'm satisfied £250 represents a fair level of compensation, for the reasons explained in my provisional decision.

I appreciate Mr D feels strongly that he couldn't – and shouldn't – have continued to make payments after his account was closed. But as I explained in my provisional decision, I'm satisfied both AmEx and its third-party were clear about how he should go about paying his balance going forward. While I don't think AmEx acted fairly when it referred Mr D's account to the collections agency, it was acting within the terms of the policy when it did so. And AmEx's errors didn't mean Mr D was no longer required to make payments under the terms of the agreement – or that interest would no longer accrue on the account.

Aside from the payment missed in August 2023, I don't think Mr D's failure to make payments on the account was due to an error made by AmEx. So with the exception of one missed payment marker, AmEx isn't responsible for how the situation has impacted his credit file. Although AmEx agreed to pause collections activity when Mr D complained, payments were still due each month – and it was required to report information about those payments to CRAs.

Mr D has suggested that AmEx's decision may have been discriminatory. I can't make a

finding on whether AmEx's actions are in breach of Equality Act (2010) – as that's a matter for the courts. My role is to decide whether AmEx acted fairly and reasonably– taking into account the relevant law and regulation – including the Equality Act.

As I've outlined, I'm satisfied that AmEx didn't treat Mr D fairly. When closing the account, AmEx told Mr D its decision was made following receipt of his financial documents – and that he no longer met its requirements for credit. While I can't share AmEx's specific reasons for closing the account, I hope it reassures Mr D to know that the decision wasn't based on his country of birth.

AmEx's comments

AmEx says it carried out its review because the activity on Mr D's account indicated a risk – and suggested that the account may not have been affordable. It also notes that it couldn't have anticipated how the account would have been used when it was applied for. Mr D was using the account within the terms and conditions of the agreement. As AmEx hasn't been able to provide details of its procedures or criteria to demonstrate why Mr D's use of the account prompted a review, I remain satisfied that it hasn't shown that the review was fair or reasonable.

I agree that AmEx should consider whether lending is affordable for customers – but I'd have expected it to have assessed the affordability of the account when Mr D applied for it. AmEx also says Mr D didn't meet the criteria to support further lending – but Mr D hadn't asked for further lending, he was simply using the credit that had already been agreed – within the terms of that agreement. While I've considered AmEx's further comments, I'm satisfied it hasn't demonstrated that its decision to close the account was made fairly in line with its usual processes.

AmEx has now agreed to recall the account and liaise with Mr D directly to agree an affordable repayment plan. I remain of the opinion that this represents a fair way forward. AmEx says it may decide to re-assign the account to a collections agency if Mr D fails to make payments as agreed. I would encourage Mr D to engage with AmEx so that a suitable repayment option can be agreed.

Neither party commented on my recommendation to remove adverse information relating to the missed payment of August 2023. I see no reason to depart from my conclusions on that point.

So, having considered Mr D and AmEx's further comments, the outcome I reached in my provisional decision remains the same – for the same reasons.

My final decision

My final decision is that I uphold this complaint. I require American Express Services Europe Limited (AESEL) to:

- Recall Mr D's account from the third-party collection agency and liaise with Mr D directly to arrange a suitable repayment plan.
- Remove any adverse information reported to credit reference agencies connected to the missed payment in August 2023.
- Pay Mr D £250 compensation.

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

Stephen Billings
Ombudsman