

The complaint

Mr H is unhappy American Express Services Europe Limited (Amex) did not tell him that his Direct Debit for his credit card had not been set up.

What happened

I set out the background to this complaint in more detail in my provisional decision which both parties have received, so below is a summarised version of what happened for the purposes of this final decision.

Mr H, a long-standing customer of Amex, changed his existing personal Amex credit card to a different Amex credit card in order to take advantage of the benefits associated with the new card.

Mr H called Amex on 15 April 2024 after he incurred a late payment fee and interest on his new account. Mr H had understood his existing Direct Debit from the old card would be applied to his new credit card account. But Amex explained a new Direct Debit was needed for the new account. As a gesture of goodwill Amex refunded the late payment fee and interest Mr H had incurred, and Mr H decided to set up a new Direct Debit on Amex's app.

On 6 June 2024 Mr H called Amex because, once more, he'd incurred a late payment fee and interest to his new account. Amex confirmed a Direct Debit had still not been set up, despite Mr H believing it had been. This time Amex did not offer to refund the late payment fee or interest, so Mr H raised a complaint which Amex did not uphold.

Our Investigator didn't uphold Mr H's complaint and because Mr H disagreed with the Investigator's findings the matter was referred to me to decide.

I issued provisional findings to both parties on 20 February 2025 to explain why I was minded to say Mr H's complaint should not be upheld. My provisional findings are below and form part of this final decision.

My provisional findings

Given some of Mr H's comments, I think it helpful to first set out that the Financial Ombudsman Service is an alternative dispute resolution service set up to resolve individual complaints based on what is fair and reasonable in the circumstances of each case. This service is therefore not a consumer champion. Nor is it set up to fine or punish businesses, or request that a business change their processes or practices – these are matters for the regulator, the Financial Conduct Authority (FCA) to consider.

For the avoidance of doubt I would also add that the Direct Debit issues Mr H first contacted Amex about when he changed to the new account do not form part of my considerations here. The matter brought to me to decide relates to Mr H's attempt to set up the Direct Debit after 15 April 2024.

I've considered all the available evidence and arguments to decide what's fair and

reasonable in the circumstances of this complaint.

In considering what is fair and reasonable in all the circumstances of the case, I have taken into account any relevant law and regulations, regulators' rules, guidance and standards, (including Consumer Duty), codes of practice, and (where appropriate) what is considered to have been good industry practice at the relevant time.

Both parties should note that while I have reviewed all the available evidence and submissions, I may not comment on or respond to all points raised. My decision is focused on what I consider to be the key issues on which the resolution of this matter rests.

Where the evidence is incomplete, inconclusive or contradictory, I've made my decision on the balance of probabilities – which, in other words, means I've based it on what I think is more likely than not to have happened given the available evidence and the wider circumstances.

Given Mr H did not make the required payment set out on his May 2024 statement when it was due, this meant the payment he made on 6 June 2024 was late. So I think it's fair to say that, under the terms and conditions of the account, Amex were entitled to apply interest and a late payment fee to Mr H's account when they did. I've therefore gone on to consider whether the terms and conditions were fairly applied given the individual circumstances of Mr H's case.

Mr H says it should be taken into account that Amex did not tell him his Direct Debit hadn't been set up. He says it was Amex's responsibility to let him know, so they should put things right.

Having reviewed the available evidence and submissions it seems to me the key considerations here are whether there was any requirement on Amex in this case to tell Mr H the Direct Debit had not been set up, and whether Mr H would likely have been aware the Direct Debit had not been accepted.

Before I consider these points, I'm aware Mr H also wishes to know exactly why the Direct Debit application was unsuccessful. As I'll comment later on, it's not entirely clear what happened, but I don't think knowing what caused the failure of the Direct Debit application alters the findings I've reached here as I'll explain.

I've first considered whether Amex should have told Mr H that the Direct Debit wasn't set up.

I note Mr H has referenced the Consumer Duty to support his position Amex should have told him the Direct Debit was not in place. But I've not found anything in the Duty which specifically requires Amex to have done this. The Duty sets out a higher set of standards for firms to follow and says firms should put customers at the heart of their considerations, but this doesn't equate to the customer always being able to have the outcome they want.

However, while I've not found any specific requirement for Amex to have told Mr H about the Direct Debit not being in place, in accordance with fundamental regulatory obligations, standards (including Consumer Duty) and good practice I would expect Amex to treat their customer fairly and support them in achieving their financial objectives by providing clear information to their customer at the right time.

I've therefore considered what was discussed in the phone call between Mr H and the Amex staff member on 15 April 2024, and reviewed the process on the Amex app to set up the Direct Debit.

During the call it was established the Direct Debit had not been accepted, and having listened to the call it is clear the Amex staff member offered to set the Direct Debit up for Mr H whilst on the call or stay on the line while Mr H set up the Direct Debit on the app. Mr H declined both of these offers and said he would set up the Direct Debit on the app himself. So I think it's fair to say Amex were willing to help guide and support Mr H through the process of setting up the Direct Debit.

It's not possible for me to know exactly what Mr H saw when he then applied to set up the Direct Debit on the app. I've therefore considered the submissions and screenshots provided by Mr H and Amex, and I've also looked online at Amex's website which includes information about and access to what the app journey would look like in practice.

Having reviewed all of this together with the rest of the submissions from both parties, it seems to me more likely than not that Mr H would have been aware the Direct Debit had not been accepted and set up.

I say this because the app, for a successful application, would have let Mr H know the date the first Direct Debit payment would be taken and to expect a letter within 10 working days confirming the Direct Debit had been set up. The app journey example I've seen also reminds customers to ensure they continue making their payments by other means until the Direct Debit is set up. I note Mr H makes no mention of anything that specifically confirmed to him that the Direct Debit had been accepted and that it was in place to start processing payments.

In the event of an unsuccessful application, the app would have presented a different screen to the customer to say Amex were unable to set up a Direct Debit using the bank account given. Amex have provided a sample of this screen. The information on the screen asks the applicant to confirm the account details provided are correct, and that they meet the criteria specified for setting up a Direct Debit. Amex have explained this would have appeared in the app straight away if the application had been declined.

The criteria are set out on Amex's website and are referred to during the app process. The app process requires agreement from the customer that they agree the bank account being used for the payments is a UK personal bank account held in the customer's name and they are the only person required to authorise payments from that account. If not, then it asks the customer to complete a Direct Debit instruction.

I've reviewed the screenshot Mr H provided showing there is no Direct Debit set up on his account. It says it can take up to 15 days for some Direct Debit enrolment requests to process, and that if a recent request was submitted that the customer not set up another request. I don't think this screenshot is enough to support that Mr H had confirmation of the Direct Debit being set up and ready to make payments. And Amex have confirmed this is the screen that a customer would see prior to making the application. So I think Mr H still had a responsibility to ensure his payments were made when due.

Mr H would have had access to his statements which would have set out the required amount to be paid and the due date for payment. Mr H, by his own admission, has said he does not check his statements. I think it would be unreasonable to hold Amex responsible for Mr H not reviewing the statements sent to him. And I think it's fair to say Mr H, as a long-standing Amex customer, would have been aware of his responsibility to ensure he made the payments towards his card when due.

Amex's internal records show two attempts to apply for a Direct Debit to be set up on Mr H's account. Mr H has told us he attempted to set it up at least three times and disputes that he could repeatedly have entered the wrong details. Amex have been unable to confirm what

precisely caused the Direct Debit application to fail (their records report it is an automated process), but they suggest it was likely a mismatch with the name of the account compared to the information they hold, or possibly that the account being used for the Direct Debit was not a personal account.

As I noted earlier, while I understand Mr H's wish to know what exactly went wrong and why he thinks it important to know this, there is not enough evidence to determine exactly why the applications weren't accepted. But I don't think I need to know this to reach a fair and reasonable outcome in this matter.

Whatever the reason the Direct Debit was not accepted, I think it's more likely than not Mr H was aware there was a problem setting up the Direct Debit given his repeated attempts to do so; the process on the app would've most likely told Mr H the application had been declined; and there is nothing to suggest Mr H was given any confirmation that the Direct Debit was in place – which would be expected if the application had been successful.

Given his conversation with Amex on 15 April 2024 I think it's also fair to say Mr H would have been aware he could contact Amex for help if he was struggling to set up the Direct Debit or thought there were any problems. I note that the Direct Debit website explains to customers they will receive written confirmation of their Direct Debit Instruction. It says customers should check the details and contact the organisation they're paying if they have a query.

I don't doubt Mr H's intention was to ensure he was making his payments towards the card and there was no intent to avoid his responsibilities under the agreement with Amex – so I recognise Mr H's frustrations. However, on balance, while it's not entirely clear what prevented the Direct Debit instruction from being successfully set up, I think Mr H more likely than not was aware there was a problem with the Direct Debit and he was aware of the support available (to call Amex) if he wasn't sure that it had been set up and needed to check. And his statements clearly set out when payment was due.

Overall I've not found anything to suggest Amex have acted unfairly on this occasion.

Responses to my provisional decision

Amex did not respond to my provisional decision.

Mr H disagreed with my provisional decision. In summary, Mr H said:

- He made repeated attempts to set up the Direct Debit only after he learned the payment had not been made and he incurred late payment charges.
- The screenshot which referenced setting up a Direct Debit could take up to 15 days was not a screenshot from the start of the Direct Debit app journey. And he did not see a screen declining the application.
- It was possible the Direct Debit had not been set up because his application had fallen out of Amex's standard processes, or possibly because his full name had not been used – but Amex would have known both forms of his name given his long-standing customer relationship with them. And he had not used a business bank account for the Direct Debit.
- There was nothing to suggest the Direct Debit application had not been accepted, therefore it was reasonable to assume it had been successful.

- Amex breached Consumer Duty, in particular by not giving proper consideration to 'consumer understanding' as they failed to inform him the Direct Debit had not been set up.
- A very recent attempt to apply for a Direct Debit again resulted in a different screen being presented at the end, where Mr H was asked to provide a copy of his recent bank statement to verify his account details.

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 have not seen enough to persuade me to alter my findings in this matter. That is, it remains my decision Mr H's complaint is not upheld.

I understand Mr H strongly maintains Amex did not do enough to make clear to him that his Direct Debit had failed to be set up.

As I previously set out, where evidence is incomplete, inconclusive or contradictory I have to base my decision on what I think is more likely than not to have happened. Mr H has provided his version of events and I have noted Amex have provided their version of events. Not being party to what happened I can therefore only reach my decision on the balance of probability based on the submissions and evidence from both parties and the wider circumstances.

Mr H maintains Amex failed to adhere to their responsibilities under the Consumer Duty, in particular that they did not furnish him with the understanding that his Direct Debit had not been accepted and set up.

The Consumer Duty is a regulatory requirement and sets out higher standards for firms to put their customers at the heart of their considerations and it sits alongside the more detailed regulator's Handbook of rules and guidance. There is nothing which specifically addresses Mr H's scenario within this framework.

The Direct Debit scheme explain on their website that a customer will receive written confirmation of their Direct Debit within three working days of the telephone call or online sign up, or no fewer than 10 working days before the first collection. And that the customer should check the details and contact the organisation being paid if there are any queries. There's nothing in the scheme setting out an obligation to notify that a Direct Debit application has been unsuccessful.

While I can't say Amex have failed to meet a specific obligation, I have also considered whether in the circumstances Amex have acted fairly and reasonably here, and that within the Duty it sets out, based on what's reasonable, that customers should be given the information they need at the right time and presented in a way they can understand.

Screenshots and applications

I've considered again what Mr H more likely than not saw during the Direct Debit application process.

Mr H maintains he did not see a message which told him the application had been declined and has again referred to the screenshot he previously shared which says it can take up to

15 days for some Direct Debit enrolment requests to be processed. Mr H maintains this screenshot did *not* appear at the start of the application process.

On the other hand, Amex have said a declined application would prompt a message confirming the application had not been successful, their internal records support this, and the screenshot Mr H had shared *would* have been seen at the start of the application process on the app.

Given the conflicting submissions and as it is not possible for me to know what Mr H saw, I've considered what I think was most likely to have happened.

I think it's reasonable to say the application was not immediately accepted, given if it had been then Amex – in line with their obligations – would have sent written confirmation to Mr H, and Mr H has confirmed he didn't receive anything. So when Mr H applied on 15 April 2024 the application must either have been declined or further information would have been required (as is now the case with Mr H's most recent application).

Mr H's original screenshot – saying there was no Direct Debit set up and that it could take 15 days to process an application – is not enough for me to say it was reasonable for Mr H to assume the Direct Debit had been set up or that it was being processed still.

I say this because the screenshot is similar to one of the screens in the early stages of Amex's example app journey. Mr H's screenshot also says there's no Direct Debit set up, and to not resubmit another application if one is already in process – which I find more likely would have been a message during the earlier part of the process to avoid spending time resubmitting another application. So, on balance, it seems unlikely this would have appeared at the end of the application.

In any event, I find it most likely the application was declined as Amex have provided an internal record which they have confirmed shows the application was declined automatically.

At this point I've noted Mr H's comments that the issue may have been not using his full name and that Amex are aware of both of his names but, as I've previously explained, I don't think I need to know the reason the Direct Debit was unsuccessful to be able to decide this case fairly and reasonably.

Mr H's most recent application highlights the information Amex require to progress the application while also setting out that payments should continue to be made until the Direct Debit is confirmed. And whether or not this most recent screenshot is due to a change in Amex's systems, I am mindful Mr H was still required under the terms of his account to ensure he made his payments by the due date – as would have been set out on his statements.

I've noted Mr H's recent submissions about the timing of his applications, and having reviewed things again I can see one application was declined on 15 April 2024 and two were declined on 6 June 2024. So I accept Mr H made only one application prior to the missed payment in May 2024. However, taking everything into account this isn't enough to persuade me to change what I think most likely happened here.

Statements

I've considered Mr H has interpreted that not hearing anything from Amex meant the Direct Debit was set up and that he thinks it unfair he should have to infer that a Direct Debit is not in place if it is absent from his statement.

Details of a Direct Debit on a credit card statement would not be unusual industry practice given businesses' responsibility to give notice of a payment that will be taken. Statements also set out what payment is required by what date, and they list out the different methods of payment available to a customer.

Amex's website explains the date a Direct Debit is collected will appear on a customer's statement. And Amex's statements, under the section '*How you can pay your statement*' explains that for Direct Debits, '*Payment will be collected from your bank account on the Direct Debit due date listed on the front of your statement*'. So I think it's reasonable to say there was information on Mr H's statements to help know whether a Direct Debit was in place.

It's also recognised that customers have a responsibility to monitor their statements, and while I am aware Mr H has said he does not check his statements, it would be unreasonable to hold Amex responsible for Mr H not viewing them.

I do recognise Mr H's frustrations with these events, but overall there is not enough here to persuade me that Amex have done something wrong or acted unfairly or unreasonably in these circumstances.

My final decision

For the reasons above, my final decision is that Mr H's complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 17 April 2025.

Kristina Mathews
Ombudsman