

The complaint

Mr I complains that a letter he received from American Express Services Europe Limited (AESL) increasing his credit card interest rate was humiliating and defamatory.

What happened

Mr I holds three credit card accounts with AESL and has been a customer since 1984.

In October 2021, Mr I received a letter from AESL relating to one of his accounts. They said, *"We review Cardmember Accounts on a regular basis to determine whether there is a greater likelihood that certain Cardmembers might not be able to repay us. Following a recent review, we have decided to increase the Personal Interest Rate on your Account"*.

Mr I thought AESL's letter was *"humiliating and defaming addressed to me in person"*. He said he'd always maintained his accounts satisfactorily and never defaulted or delayed his payments. He accepted banks have a right to increase interest rates but thought they *"should not use the same yardstick to measure all customers"*.

Mr I decided to complain to AESL. AESL issued their response in an email on 28 October 2021. They apologised that his *"experience has left you feeling dissatisfied"* and *"our decision to increase your interest rate...has caused you inconvenience"*. AESL also apologised that Mr I feels *"that we are questioning your financial integrity...Please be advised we are not questioning your financial integrity, and I am sorry to learn you feel otherwise"*.

AESL explained Mr I's right to opt out of the change. They said this would result in his account being closed although any remaining balance could be repaid at the existing rate.

Mr I wasn't happy with AESL's response. So, he referred his complaint to this service. He said he wanted *"a formal written apology upholding (his) written complaint..."*.

Having considered all the information available, our investigator didn't think AESL had acted fairly. He said Mr I had previously raised concerns about a similar letter he'd received relating to another of his accounts some time earlier. Our investigator said AESL had given Mr I an assurance they were amending the text of their letter. But the wording of the later letter hadn't been changed. Our investigator thought AESL should apologise to Mr I and award him £100 for the inconvenience caused.

AESL didn't agree they'd acted unfairly and didn't feel they could be held accountable for how Mr I perceives the wording of their letter. They said their letters are passed through rigorous testing and compliance analysis and their intentions were never to cause Mr I any alarm, dismay or inconvenience.

As an agreement couldn't be reached, Mr I's complaint has been passed to me to consider. In doing so, I reached a different outcome to that of our investigator. Because of that, I issued a provisional decision on 8 September 2022 – giving both Mr I and AESL the opportunity to respond to my findings below before I reach a final decision.

In my provisional decision, I said:

Mr I has accepted that AESL are within their rights to vary the interest rate on his credit card account. Having considered AESL terms and conditions, I also agree they

are able to make those changes, providing Mr I is provided with the stated period of notice and they have a valid reason for the increase.

The rules that apply to such changes are detailed within the Financial Conduct Authority's (FCA) Consumer Credit Sourcebook (CONC).

CONC 6.7.13 says that AESL must give Mr I 60 days' notice of any interest rate increase and also permit him to pay off the outstanding balance at the rate of interest before the proposed increase over a reasonable period. That's what AESL did here, so I can't reasonably say they did anything wrong or made a mistake in that respect.

CONC 6.7.15 provides examples of valid reasons for increasing the rate of interest. They include:

- (1) *"recovering the genuine increased costs of funding the provision of credit under the agreement; and*
- (2) *a change in the risk presented by the customer which justifies the change in the interest rate, which would not generally include missing a single repayment or failing to repay in full on one or two occasions".*

CONC 6.7.16 goes on to say *"Where a firm increases a rate of interest based on a change in the risk presented by the customer, the firm must:*

- (1) *notify the customer that the rate of interest has been increased based on a change in risk presented by the customer; and*
- (2) *if requested by the customer provide a suitable explanation which may be a generic explanation for such increases".*

The wording of AESL's variation letter suggests that the increase, in Mr I's case, follows an assessment of *"whether there is a greater likelihood that certain Cardmembers might not be able to repay us"*. I think this suggests the increase resulted from a change in the risk presented by Mr I.

Mr I's complaint letter of 14 October 2021 specifically asks, *"Could you please explain and clarify to me on what basis Amex have determined that there was a greater likelihood that I would not be able to repay Amex my debt?"*. I think it's clear that Mr I was requesting a suitable explanation. So, given the requirements of CONC 6.7.16, I think AESL were obliged to provide that explanation, albeit generically.

In AESL response to Mr I's complaint, they said, *"I confirm we are making changes to your agreement as we are increasing the interest rate on your account..."*. Having considered all other correspondence provided, I can't see that AESL have provided a *"suitable explanation"* where they should've done. And while it is accepted that explanation can be generic, I don't think they've addressed Mr I's concern here. So, I intend to reflect this in my decision.

The crux of Mr I's complaint then relates to the wording AESL used in their letter. Mr I perceives the wording as insulting and defamatory. I do appreciate Mr I's strength of feeling here. Perception is a very personal thing. What is seen as reasonable by one party may not be considered so by another.

Defamation occurs where there's damage to the reputation of an individual resulting from actions or communications to a third-party. Mr I confirms that AESL's letter was *"addressed to him in person"*. I've found no evidence that the letter was sent to any other party by AESL. So, I can't reasonably conclude that AESL's actions here were defamatory. Furthermore, an insult requires there to be deliberate intent. Based on all the information available, I've found nothing to suggest that AESL sent the letter to Mr I with the specific intention of insulting him. So, while I appreciate Mr I will be disappointed, I can't reasonably say that the wording of AESL's letter supports Mr I's perceptions.

Mr I has referred to a letter he received from AESL previously, following his complaint about a similar variation letter he'd received. I'm unable to consider the circumstances of that complaint as its outcome hasn't specifically been referred to this service. However, I accept that AESL had told Mr I that they would be changing the wording of their letters based upon his and other customers' feedback.

It's unfortunate that the proposed wording change hadn't been introduced by AESL. But as Mr I's complaint is driven by his perceptions rather than any inaccuracies or mistakes, I can't reasonably say that AESL did anything wrong by not implementing those changes sooner.

As a resolution, Mr I would like AESL to uphold his complaint and provide a formal written apology. Accepting that AESL haven't upheld Mr I's complaint, I believe their written response does apologise for how their letter made Mr I feel. And I think that was the appropriate thing to do here.

However, I can't see AESL have provided Mr I with a suitable explanation of why his interest rate was increased and why they believe there's a change in the risk presented by him. And I believe this is likely to have contributed to Mr I's perceptions. For that reason, I believe Mr I should be compensated for any distress and inconvenience caused.

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 I responded to my provisional decision confirming that he had nothing further to add.

AESL haven't responded to my provisional decision, despite a follow up request to them.

In the circumstances, and in the absence of any additional information or evidence, I've not been persuaded to vary from my original findings, so my final decision remains unchanged.

My final decision

For the reasons set out above, I uphold Mr I's complaint.

I require American Express Services Europe Limited to:

- provide a suitable explanation to Mr I of why they've concluded there's a change of risk, if applicable; and
- pay Mr I compensation of £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 3 November 2022.

Dave Morgan
Ombudsman