

The complaint

Mr A complains that American Express Services Europe Limited did not refund his purchase of some items he had returned, and closed his account without notice.

What happened

In July 2022 Mr A bought a plant and some other items from a garden centre. He paid £150.47 for them with his American Express card. He says that in September he returned all the items and asked for a refund, and tapped the same card on the card reader to receive the refund. But shortly afterwards, he discovered that instead of being refunded, the garden centre had charged him another £16.99.

Mr A asked American Express to refund both transactions. But American Express decided that there was not enough evidence to prove what had happened, and so it did not refund him. And in October it closed his account without notice, and without giving a reason. Mr A says that as a result he lost all of the Membership Rewards points he had collected on his card, and if he had been given time he could have transferred them to his account with a third party. He also said that the account closure had meant that he had missed his minimum payment for that month, which had been reported on his credit file. He had paid off his account balance as soon as he realised what had happened.

Mr A complained to our service, but our investigator did not uphold this complaint. She agreed that there was not enough evidence to show that Mr A had returned the items or that he was promised a refund, or that anything he had bought had been faulty. So she concluded that a chargeback would not have succeeded, and that American Express was not liable to Mr A under section 75 of the Consumer Credit Act 1974.

However, the investigator also said that the garden centre had not provided very much evidence either, and that American Express appeared to have just taken the garden centre's word over Mr A's. And she upheld Mr A's complaint about his account being closed, as although American Express's terms and conditions say that it can close an account at any time and without saying why, this was contrary to section 98A(4) of the Consumer Credit Act, which says that a reason must be given and the reason "must be objectively justified." So she recommended that American Express pay Mr A £200 for the inconvenience caused to him. But she thought that American Express had forfeited his Membership Rewards points in accordance with its terms and conditions.

American Express accepted that recommendation. Mr A did not; he had previously asked for £900. So this case has been referred for an ombudsman's decision.

I wrote a provisional decision which read as follows (I have edited it slightly for accuracy).

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.

I agree that there was not enough evidence for a chargeback to have succeeded. There is no evidence to show that the purchased items were returned or that the garden centre agreed to refund them. I also don't think Mr A has proved that there was a breach of contract or a misrepresentation for which American Express would be liable under section 75. There is no evidence that there was anything wrong with the plant, or with any other item, when Mr A bought them. So I think that American Express was not obliged to refund what he had paid, either in whole or in part.

I uphold Mr A's complaint about the closure of his account. As the investigator has already pointed out, section 98A(4) required American Express to give Mr A reasons for terminating or suspending his right to draw on credit. And I would add that section 98A(3) says that two months' notice must be given before terminating his credit agreement. If subsection (3) had not been breached, then Mr A need not have lost his Membership Rewards points – he had 15,754 – and it is unlikely (given his credit history) that he would have failed to pay off the account balance in time to avoid adverse information being recorded on his credit file.

I put all of this to American Express, which replied to re-iterate that its terms and conditions allow it to close an account immediately in certain circumstances. But section 173 of the Act prohibits contracting out of the protections in the Act. So while I am satisfied that American Express complied with its own terms and conditions, it still contravened section 98A.

American Express pointed out that its terms and conditions say that when an account is closed in accordance with those terms, any Membership Rewards points its customer had are lost. However, I don't think that American Express can reasonably rely on its terms in defence of a breach of the Act. As I've said, if Mr A had been given the two months' notice to which he was entitled, he would not have lost the points. So I am minded to require American Express to put that right. I have assumed that a point is worth 1p.

Mr A was entitled to be told the reason for his account being closed, and I have taken this into account when deciding how much compensation is fair. I agree with the investigator that £200 is fair compensation for his inconvenience.

I am currently minded to uphold this complaint. Subject to any further submissions I receive from the parties by the deadline below, I will order American Express Services Europe Limited to:

- Pay Mr A £200 for his inconvenience,
- Pay him £157.54 for his lost Membership Rewards points, and
- Remove from his credit file the missed payment in the penultimate month of the agreement.

Responses to my provisional findings

Mr A told me that if he had been given notice, he would have transferred his points to British Airways for Avios points, which he said would have been worth more than 1p each; about £280 in total. He provided a link to BA's website to show how much they were worth (approximately 1.7p).

American Express pointed out that the page on BA's website showed how much it would cost to buy Avios points, which was not the same as how much they would be worth if Mr A was spending them. It added that when Mr A's account was closed, he forfeited 16,167 Membership Rewards points.

Mr A argued that the value of Avios points when they are being spent is irrelevant, because in order to get back the 16,000 Avios points he would have got if American Express had let him transfer his Membership Rewards points, it would cost him about £280.

My findings

My aim is to put Mr A back in the position in which he would have been if American Express had allowed him enough time to transfer his Membership Rewards points to BA. If that had happened, he would now have 16,167 Avios points. In order to have that many points now, I calculate that he will need to spend about £275 to buy them from BA. So I think it would be fair and reasonable to require American Express to reimburse him for that, as working out how much money Mr A would have saved by spending them depends on too many different factors.

My final decision

My decision is that I uphold this complaint. I order American Express Services Europe Limited to:

- Pay Mr A £200 for his inconvenience,
- Pay him £275 for his lost Membership Rewards points, and
- Ask the credit reference agencies to remove from Mr A's credit file the missed payment in the penultimate month of the agreement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 18 May 2023.

Richard Wood
Ombudsman