

The complaint

Mr F complains that American Express Services Europe Limited (AESEL) (“AmEx”) suspended then closed his credit card account. He said AmEx had fabricated some of its communications with him, and he wouldn’t pay AmEx until it reopened his account.

What happened

Mr F opened an AmEx account in November 2022. In January 2023, he found his AmEx credit card wasn’t working. He rang AmEx, and it said his account was under review. He was asked to send recent bank statements. Mr F said he sent these right away.

Mr F said in late February, he got a notification that his AmEx card was available again on a phone and smartwatch payment app. But the card wouldn’t work. So he called AmEx once more, and was told his card had been cancelled.

Mr F has shown our service a series of letters from AmEx, saying his account was under review and had been suspended, then saying that AmEx had reasonable grounds to believe that Mr F was unwilling or unable to pay his debts when due. AmEx said that was a breach of its agreement with Mr F, and so it intended to terminate its agreement with him.

Mr F showed us a subsequent notice that his account was terminated with a formal demand for payment. AmEx has asked him to talk to its solicitors about repayment of the outstanding debt, which was over £23,000.

Mr F says he didn’t get all of these letters at the time AmEx says they were sent, and he’s since said he thinks AmEx has fabricated some of this evidence. Mr F has withheld payment of the outstanding amount. He wants his card to be reinstated once he’s paid in full.

AmEx didn’t think it had done anything wrong. It said Mr F had quickly begun spending large amounts, when he got his card. So AmEx wanted to review things and make sure the level of spending was supported by his income. Mr F then used the card to send cash to friends, which AmEx said also causes concerns. So AmEx said it decided to cancel the card.

AmEx acknowledged it had written to Mr F to say his card was added to a phone and smartwatch payment app, but it said this wasn’t an indication that his account was no longer suspended. AmEx said Mr F’s account was cancelled over concerns around his management of the account, and it didn’t think there were any errors in the process it had followed. It wouldn’t reopen the account.

Our investigator didn’t think this complaint should be upheld. He said AmEx is entitled to suspend and close an account if it feels the account isn’t being run in line with its criteria. But Mr F felt none of the conditions for immediate closure of his account were met. As no agreement was reached, the case then came to me for a decision.

I then issued a provisional decision, in which I said I was minded to uphold the complaint. I said then that I didn’t think AmEx had to reopen Mr F’s account, or that it was obliged to clear his credit record. I said AmEx was entitled to close the account, but I couldn’t see that it

was entitled to close the account without notice, which was what it had done. I hadn't been able to see it was reasonable for AmEx to reach the view that Mr F was either unwilling or unable to pay, based on the conduct of this card at the time the decision was reached. AmEx sent some additional information in response, and I changed my mind. So I issued a revised provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did not propose to uphold it. This is what I said then:

My first provisional decision included that AmEx didn't have to reopen Mr F's card, or clear his credit file. Broadly speaking, AmEx doesn't have to offer Mr F a card account if it doesn't wish to, and it is entitled to tell credit reference agencies if Mr F withholds payment to clear the debt. I still think that.

My concern at the time of my first provisional decision, was whether AmEx had shown it had grounds to terminate Mr F's card without notice.

AmEx has always said it closed Mr F's account because it had reasonable grounds to believe that Mr F was unwilling or unable to pay his debts when due, which is one of the reasons for termination without notice set out in the terms and conditions that Amex has shown us.

In response to my first provisional decision, AmEx has provided additional evidence on this point. AmEx said it was sending this information to our service in confidence.

The rules that govern our service do allow us to receive evidence in confidence. We may treat evidence from financial businesses as confidential for a number of reasons – for example, if it contains information about other customers, security information or commercially sensitive information. It's then for me to decide whether it's fair to rely on evidence that only one party has seen.

I understand that Mr F may find this frustrating. But this is not a one-sided rule; either party to a complaint can submit evidence in confidence if they wish to, and we'll then decide if it's fair to rely on it.

Here, I do think that the information is sensitive, and on balance I don't believe it should be disclosed. But it's also clearly material to the issue of whether AmEx has treated Mr F fairly. So, I'm persuaded I should take it into account when deciding the outcome of the complaint.

In the light of this new information, I now think AmEx has shown it had reasonable grounds to believe that Mr F would be unwilling or unable to pay his debts when due. And because of that, I think AmEx was entitled to close this card account without a requirement to give Mr F notice.

My provisional decision is therefore that I would no longer propose to uphold this complaint. I do not think it would be fair and reasonable for me to do so.

I invited the parties to make any final points, if they wanted, before issuing my final decision. Both sides replied.

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.

AmEx said it had received my provisional decision, and it had nothing to add.

Mr F replied to say that he disagreed with my decision. He said that at no time had he been unable or unwilling to satisfy this debt. Mr F said he'd disclosed a bank balance to AmEx which made clear that he could pay the debt. And he said that he then had a high credit score, which proves he was able and willing to pay his debts.

Mr F also said he didn't use his card to send money to "friends". He said he'd sent funds once, to an employee, for a business purchase. He wanted me to point to the bit of the rules that said this wasn't allowed. Mr F said it would be ridiculous to say that spending on the card was rapidly increasing, as the card was at less than 50% of its limit.

Mr F also wanted to know how he could know whether the evidence that our service had been sent by AMEX was accurate? He wanted to know if we could advise him of the type of content without actually disclosing it. He said AmEx had fabricated correspondence previously, and he had proved this, so he thought AmEx would be prepared to do that again.

Mr F also made a Subject Access Request, to see his personal data. Our service will deal with that issue separately.

Our service has replied to Mr F, and in that reply we noted that my first provisional decision considered Mr F's allegations that a letter AmEx sent us had been fabricated after the fact, rather than sent to him at the time. I said then that I didn't think that was likely, as AmEx's internal systems indicated a letter was issued on this date. And I haven't seen anything in this case to make me think that the evidence in confidence which AmEx has subsequently sent us has been fabricated either.

I realise this is deeply frustrating for Mr F, so I'm sorry to have to tell him that I don't think it would be appropriate here, for the reasons set out in my provisional decision above, to discuss that evidence further. I have considered Mr F's further submissions, and I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that I don't uphold this complaint.

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

Esther Absalom-Gough

Ombudsman