

## The complaint

Mr D complains that American Express Services Europe Limited (“AESEL”) imposed a spending limit on his account.

## What happened

Mr D holds a Preferred Rewards Gold Charge Card account on which there is a supplementary card holder.

On 25 September 2023 AESEL applied a limit of £3800 on the account. It said it did this because large sums of money had been transferred from the credit card account to Mr D’s PayPal account and it considered this to be a breach of the terms and conditions of the account.

Mr D disagreed and said the terms and conditions hadn’t been breached because it was the supplementary cardholder doing the transfers and not himself.

Mr D complained to AESEL.

AESEL didn’t uphold the complaint. It said that Mr D owned the supplementary card and was responsible for all transactions made on the account. It said it considered the account to belong to Mr D and it could not allow transactions to be made to a PayPal account in Mr D’s name.

Mr D remained unhappy and brought his complaint to this service.

As part of his complaint, Mr D raised concerns about AESEL’s prior credit file reporting. This aspect of the complaint was considered separately and was found to be outside of our jurisdiction.

Our investigator didn’t uphold the complaint. They said that whilst they understood the view taken by Mr D that the activity on the account didn’t justify the steps that AESEL had taken, they considered the actions taken to be consistent with the terms and conditions of the account.

Mr D didn’t agree. He said he hadn’t used the account in a way which disguised the true nature of a transaction. He also said the wording of the terms and conditions didn’t state that it included actions by the supplementary cardholder, and he believed the terms and conditions were unclear and misleading. Mr D also said that he thought AESEL should’ve discussed the transactions with him rather than unilaterally imposing a limit on the card.

## 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 looked at the terms and conditions of the account. The relevant section headed “Where we can refuse to authorise a transaction” states that “*You may not use your account for*

*illegal activities or in a way which disguises the true nature of the transaction, for example .....using your account to send funds to yourself through a payment processor”.*

AESEL said that these terms and conditions were breached when the supplementary cardholder transferred large sums of money from the card account to Mr D's PayPal account.

Mr D says the terms refer to “You” and that therefore they only apply to him (and not the supplementary cardholder). He says that because it was the supplementary cardholder who completed the transactions, this isn't a breach of the terms and conditions.

I understand the argument that Mr D advances here. However, the terms and conditions of the account refer to the use of the account, not to the use of the card by individual cardholders. Mr D is the account holder and he's responsible for making sure that the account isn't used in a way which breaches the terms and conditions.

There's no dispute that the transactions to Mr D's PayPal account took place. I've seen statements showing that there were 9 transactions, which together totalled over £15,000.

I've gone on to consider whether this constitutes a breach of the terms and conditions.

AESEL hasn't suggested that Mr D's use of the account was illegal. So I'm focussing on the second part of the relevant sentence *“in a way which disguises the true nature of the transaction”*. AESEL's terms and conditions give examples of transactions which it considers would disguise the true nature of the transaction, and one of these examples includes using the account to send funds to yourself through a payment processor. So on a straight analysis, I think the terms and conditions are clear, and I'm satisfied that the terms and conditions have been breached.

Mr D has introduced the concepts of “deceptiveness” and “dishonesty” here. He has said that AESEL need to show that the use of the payment processor must have been done deceptively, or that he acted dishonestly.

I don't agree with Mr D's analysis here. There's no reference to “deceptiveness” or “dishonesty” in the terms and conditions. The word used is “disguise”, and it's used in the context of disguising the true nature of a transaction.

I've reviewed the final response issued by AESEL and I can't see that it has been suggested that Mr D has been dishonest.

Mr D has also said that he believes AESEL acted in a hostile way by imposing the limit on the card rather than discussing the matter with him. This goes to whether AESEL acted fairly and reasonably in response to the transactions conducted on the account. I understand why Mr D would have preferred to have a discussion with AESEL first but ultimately, I don't think this would've changed the outcome because the factual and contractual matrix would be the same. Given the volume of accounts that AESEL manages, I don't think it would be practical or proportionate to expect them to discuss breaches of the terms and conditions with individual customers before taking action.

Taking everything into account. I'm unable to say that AESEL has made an error here or that it has treated Mr D unfairly or unreasonably. I won't be asking it to do anything further.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 15 May 2024.

Emma Davy  
**Ombudsman**