

## **The complaint**

Mr V complains about American Express Services Europe Limited (AESEL) (Amex)'s Know Your Customer (KYC) checks.

## **What happened**

Amex contacted Mr V on 12 July 2022 and asked him to provide documents to complete some KYC checks. Reminders were sent on 5 August 2022, 21 August 2022, 19 September 2022. On 5 October 2022, Mr V's account was suspended.

Mr V complained. He said he had been a customer of Amex for 32 years and couldn't see why the information was needed. He asked Amex why this was the case and was told it was due to Financial Conduct Authority (FCA) rules – but Amex couldn't say which ones. He said he'd contacted the FCA who said there were no such rules. He said Amex may have discriminated against him and breached the Equality Act 2010 and Consumer Rights Act 2015.

Mr V said - because his account was suspended, he couldn't use it and earn rewards. He wants compensation for the stress and anxiety caused, and to reimburse him for the lack of rewards he couldn't earn during the suspension. He wants an apology, his account restored and an assurance that his credit file hasn't been affected. Overall, he said that Amex's dealings with him were 'might is right' – and was typical of a large financial institution.

Amex said they are required to periodically collect, update and review information held for customers – to meet regulatory requirements. They'd written to Mr V on 5 August 2022, 21 August 2022, 19 September 2022, and 5 October 2022 to request the information, and advised him also what would happen if he didn't provide it.

Mr V brought his complaint to us. Our investigator didn't uphold it. He said Amex's checks were to comply with regulatory requirements. Amex had written to Mr V four times to set out what was needed, and his account was later suspended. It was finally cancelled on 15 November 2022. He said Amex had given sufficient notice to Mr V about what was needed. The checks were non-discriminatory and the length of time a person had banked with Amex wasn't relevant – he hadn't seen anything to suggest that there had been any discrimination.

Our investigator tried to mediate a solution with Amex. He asked if they would:

Restore Mr V's account; confirm there had been no impact on Mr V's credit file; provide an apology; provide an assurance that no discrimination occurred under the Equalities Act 2010; provide an assurance that actions have not been contrary to the Consumer Rights Act 2015; pay compensation for Mr V's time, inconvenience, loss of Membership Rewards; and refund late payment charges applied to the account.

Amex didn't agree to this. They said the KYC process must be followed and completed; Mr V had been sent many letters setting this out; KYC is carried out routinely for all cardholders, so there wasn't any discrimination; the KYC process doesn't impact a customer's credit file, but in Mr V's case – he hadn't made some payments to the account, and that will have

affected his credit file.

Amex said they'd acted reasonably, and didn't feel they should apologise, nor reinstate Mr V's account, or pay compensation.

Mr V didn't agree and asked that an ombudsman look at his complaint. And so it has come to me to make a final decision.

### **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 think it's reasonable to say that all firms, including Amex, have regulatory obligations to check customers' identity and address verification from time to time.

Mr V's complaint started when he asked Amex to point to the Financial Conduct Authority (FCA) ruling which set out what checks were needed to be made by firms such as Amex. He contacted the FCA and he showed us the letter from the FCA. This said *"As the regulator, we set the rules and regulations for authorised firms to follow. When it comes to KYC our expectations are set out in our handbook... However, we don't have any specific rules which state exactly what information or documents the firm request from you. This is usually a commercial decision on the firm themselves in order to satisfy general KYC requirements..."*

In other words, the FCA's letter says it is down to firms (including Amex) what information they ask for – to complete identity and address verification. So here – Amex were never going to be able to 'point to a FCA rule' as Mr V has asked.

Mr V has said that as a customer of 32 years, it wasn't appropriate for Amex to ask him for the information. But – all firms are required to update their records from time to time, and it's reasonable that they do so. And I think it's reasonable that they do so for any customer they wish to – regardless of the time they've banked with Amex. I looked at Amex's terms and conditions – and these do give Amex the right to end the credit card agreement if they wished. These say: *"We may also end this Agreement by giving you at least two months' written notice without any explanation being required"*.

I looked at the communications from Amex - as they must be clear and not misleading.

Amex wrote to Mr V, firstly on 12 July 2022. The email set out what was needed, the documents that were acceptable, and how to send them (which was an upload link). The email said that if the information wasn't sent in 60 days from then, Mr V's account would be suspended and may be closed after 90 days.

On 5 August 2022, Amex sent a reminder; on 21 August 2022, Amex sent another reminder. This set out what was needed i.e. - proof of address and identity; and the email said Mr V's account would be suspended in 75 days if the documents weren't provided; on 19 September 2022, Amex sent another reminder and said the account would be suspended in 15 days if the information wasn't provided ; on 5 October 2022 – Amex advised Mr V his account was suspended.

So – I consider that Amex gave Mr V sufficient, clear and detailed notice of what they needed, and set out what would happen if the documents weren't provided. They also gave sufficient notice of over 60 days to warn Mr V about the account suspension – so they complied with the terms and conditions in giving enough notice. I think that was reasonable. I don't know why Mr V didn't send in the documents – hasn't said exactly why, other than his

objection to doing so because he had been with Amex so long, and he wanted to see the FCA's 'rules'. But unfortunately, this has led to his account being suspended and then closed.

Mr V has asked whether he was discriminated against. And whether Amex breached the Consumer Rights Act 2015 and Equality Act 2010. Here, let me say what our role is – which is to decide what's fair and reasonable in all the circumstances of each case, taking a number of things into account including relevant law and what we consider having been good industry practice at the time. So although ultimately, it's for the Courts to say whether or not Amex has breached the legislation, we're required to take this into account, if it's relevant, amongst other things when deciding what is fair and reasonable in the circumstances of this complaint.

In this context, Amex told us that they update records of many customers from time to time. I've seen no evidence that Mr V was singled out in any way. In other words, many customers of Amex were being treated in the same or similar ways – so I cannot reasonably say Mr V was discriminated against. I hope that provides him with some assurance that someone independent has looked at this.

Mr V has said he wants an assurance that his credit file hasn't been affected. Amex told us that the KYC process doesn't do so. But – how Mr V has managed his account is reported to the credit reference agencies. I can see that Amex sent default notices (for a late payment) to Mr V in December 2022; and again in January 2023 and March 2023. And these will have been marked on his credit file. Amex have an obligation to report accurate information to credit reference agencies; and so this cannot be removed.

In summary, while I can see that Mr V feels strongly about his complaint, and has argued for it forcefully, I'm not asking Amex to do anything here.

### **My final decision**

I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr V to accept or reject my decision before 11 October 2023.

Martin Lord  
**Ombudsman**