

## **The complaint**

Ms M, on behalf of 'F' – a limited company complains that American Express Payment Services Limited (AEPSL) has not returned to it funds that were paid into a wrong merchant account.

## **What happened**

As the background to this complaint is well known to both parties and has been ongoing for some time, in this decision I'll focus mainly on explaining the reason for reaching the outcome that I have.

F had a merchant services contract with a third party, E. Payments made via that contract were processed by AEPSL. It appears that when F's payment terminal was set up, an incorrect merchant identification number was entered. Between August 2019 and September 2020 payments were being sent to the incorrect account - an account belonging to a different business, K.

In 2020 K realised that it had received some payments it was not entitled to and contacted AEPSL to return the funds. AEPSL and K determined that these payments were likely due to F and so AEPSL asked F to provide evidence of the payments that it had not received. After some back and forth, AEPSL ultimately returned around £14,000 of the disputed payments to F – relating to payments made between February and September 2020 – and offered to pay 8% interest on this amount as compensation for any delays. But AEPSL says it cannot be held responsible for the recovery of any remaining outstanding funds.

One of our investigators looked into what had happened, but felt that AEPSL had treated F fairly. F disagreed, so this complaint has been passed to me for 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.

Having done so I've reached the same conclusion as our investigator and for largely the same reasons.

In August 2019 F entered into a merchant services contract with E, payments made as part of this contract were processed by AEPSL. At that time a new terminal was installed for F to take payments with. The installation was done by another party, X.

Both parties are broadly in agreement that an incorrect merchant ID was recorded on the terminal – but disagree on who was responsible for this error. This resulted in payments from August 2019 to September 2020 being diverted to an account belonging to a third party, K. F thinks this was down to an error by AEPSL, AEPSL says that any error in inputting the merchant ID would be down to the installer - X. I've been given no documentary evidence to show exactly what was discussed between X, F and AEPSL at the time the terminal was set up.

Based on what I've seen and with my understanding of how terminals are set up, I haven't seen sufficiently persuasive evidence to fairly conclude that any error in setting up the terminal was AEPSL's fault. And in any case, regardless of why the wrong merchant ID was recorded on the terminal, there was still an obligation on F to keep track of the payments it was receiving and flag any that were incorrect. It is part of AEPSL's terms and conditions that merchants must notify it within 90 days of any missing or incorrect payments. But I cannot see that F flagged any of these missing payments with AEPSL until AEPSL made contact with F itself in late 2020. Given that AEPSL wasn't told about these missing payments, it didn't have the opportunity to put any errors right or potentially mitigate F's losses until it was notified by K that it had been receiving these payments in error. And by that stage AEPSL was reliant on K to return any disputed payments.

What I've seen suggests that K first made contact with AEPSL in May 2020, and that K provided a detailed spreadsheet of the payments it had received in late 2020. This covered payments received between May 2020 and September 2020 – when the terminal was reprogrammed with the correct merchant ID. AEPSL made contact with F to say that it appeared some payments due to F had been made to the wrong account, and to ask for evidence to show which payments F was entitled to. I don't think it was unreasonable for AEPSL to ask for documentary evidence of the payments, such as receipts, it needed to ensure that any payments made to F were correctly due.

F initially provided a spreadsheet of the missing payments in March 2021, and around this time K returned the funds it had identified to AEPSL where they were kept aside. AEPSL then received some receipts as evidence of the transactions from F in December 2021. AEPSL ultimately decided that it was more likely than not that the payments K had returned did belong to F, and it paid those funds (totalling £14,372.04) to F in March 2022. AEPSL also offered to pay 8% interest on top of this amount to compensate F for any delay in returning the payments to it.

There was a delay here in returning the identified incorrect payments to F, I consider though that this delay was at least partially because F had not provided all the receipts for the missing payments. So with this in mind I'm satisfied that the 8% interest AESEL has offered to pay on top of the returned payments is fair, reasonable and proportionate compensation. I also must bear in mind that F is a limited company, it is not a person who can be distressed or upset by a delay in the payments being returned, so any compensation is purely to recognise any additional work or inconvenience caused to F in chasing the return of the funds.

I understand that there are further missing payments, for the period September 2019 to February 2020, which F says it is entitled to. But as explained above, given that these transactions were not raised with AEPSL until well after 90 days since they had been made, any effort to recover the payments would be on a best endeavours basis. AEPSL has though said it is willing to communicate with K, who likely also received these payments, to see if they can be found and returned. But AEPSL has asked for detailed receipts, in a format it can read, to enable it to do this, and I consider that to be a reasonable request on AEPSL's part. My understanding is that F has sent AEPSL a link, but AEPSL is unable to access that link. It's for F now to send the appropriate evidence in a readable format to AEPSL.

Overall, I am satisfied that AEPSL has appropriately handled the issues F has had with these payments so far - when they were made aware of the issues. I acknowledge that there were some delays in returning the identified incorrect payments to F, but I consider that AEPSL's offer to pay 8% interest is appropriate to resolve that part of F's complaint. I'm also satisfied that AEPSL has suggested a reasonable way forward with the remaining payments that are outstanding.

### **Putting things right**

To resolve this complaint AEPsL should pay 8% interest on the £14,372.04 from the date this payment should have been returned to F to the date it was returned to F.

### **My final decision**

I uphold this complaint. American Express Payment Services Limited should put things right in the way I've set out above, if it hasn't done so already.

Under the rules of the Financial Ombudsman Service, I'm required to ask F to accept or reject my decision before 13 April 2023.

Sophie Mitchell  
**Ombudsman**