

## **The complaint**

C complains American Express Services Europe Limited (“AESEL”) blocked their merchant account and withheld funds they were entitled to.

To put things right, C wants their funds returned along with interest and compensation.

## **What happened**

C has a merchant account with AESEL. In December 2022, following disputed payment claims made against C from its customer’s, AESEL reviewed the account and placed restrictions on it – the business account was suspended for payment.

AESEL asked C about some of the transactions it had concerns about and requested related information. AESEL then created a reserve, which in effect meant it withheld payments from C.

C says AESEL withheld around £65,000 but should only have withheld around £22,000 as that is the amount the disputes relate to. C says AESEL’s actions have led to it not being able to meet their rent payments, and face eviction.

C complained to AESEL, and it did not uphold the complaint. In its final response, and follow up correspondence, AESEL in summary said:

- The actions taken by AESEL’s Merchant Review Team in relation to the withheld payments was carried out in accordance with its standard procedures and terms of the account agreement
- Section 10a of the agreements also says AESEL does not need to compensate merchants for a delay in making payment
- Section 7 of AESEL’s terms and conditions say it can exercise a right to withhold payments and create a reserve. AESEL doesn’t take the decision to create such a reserve lightly, and will endeavour to release the funds as soon as possible

Unhappy with AESEL’s response, C referred their complaint to this service. One of our Investigator’s looked into C’s complaint. They spoke to C’s director who said that they were facing cash flow issues because of AESEL’s actions and were concerned about meeting staff wages. C has had to borrow money to get by to, but it has other card merchant terminal providers it can use. C also said that it was normal, given their business activities, for disputes to be raised.

After looking into C’s complaint, our Investigator upheld it. Some of the key findings they made were:

- The terms of the account agreement allow AESEL to hold a reserve to manage any potential liability. But AESEL are withholding funds more than £50,000 – and this far

exceeds any potential liability they could see

- As most chargebacks were resolved in January 2023, it's not clear why the remaining chargebacks haven't been resolved sooner. Without evidence to explain otherwise, the review should have been completed by March 2023.
- AESEL hasn't shown sufficient evidence that it's treating C fairly in holding such a large sum and for as long as it has
- AESEL have said it would shortly be releasing around £23,000 to C, but it hasn't explained why it's this amount and when it will be released. Nor has AESEL explained why this differs to that of the disputed chargebacks amount
- In terms of any compensation, we can only consider the impact on C as a legal entity. C still has access to its business premises so hasn't been evicted. Nor has any evidence been sent in to evidence C suffering a financial loss – something they haven't claimed
- To put things right, AESEL should maintain a reserve of £16,140 given its potential liability and it should release all remaining funds. AESEL should also pay 8% simple interest on those remaining funds from 1 March 2023 to the date of payment

In response C says it has since received £9,000 from AESEL. But as AESEL did not agree with what our Investigator said, this complaint has now been passed to me – an ombudsman – to decide.

### **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 decided to uphold this complaint in part. I'll explain why.

I'm very aware that I've summarised the events in this complaint in far less detail than the parties and I've done so using my own words. No discourtesy is intended by me in taking this approach. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts.

If there's something I've not mentioned, it isn't because I've ignored it. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome. I do stress however that I've considered everything C and AESEL have said before reaching my decision. It's important to note, my decision focuses on AESEL's actions regarding C's merchant account.

I would add too that our rules allow us to receive evidence in confidence. We may treat evidence from AESEL as confidential for a number of reasons – for example, if it contains security information, or commercially sensitive information. Some of the information AESEL has provided is information we consider should be kept confidential.

AESEL is strictly regulated in the UK and must take certain actions in order to meet its legal and regulatory obligations. AESEL is also required to carry out ongoing monitoring of an existing business relationship. That sometimes means AESEL needs to restrict, or in some cases go as far as closing, customers' accounts.

Having seen the reasons why AESEL restricted and reviewed C's account, I'm satisfied it acted fairly and in line with its obligations by doing so. Both parties are aware that several of C's payments had been disputed by the remitters. To that end, C says that it is typical for its remitting customers to dispute payments given the nature of its business.

This brings me onto the crux of C's complaint, that is, have AESEL acted fairly and reasonably, and in line with the terms of the account, by creating a reserve and doing so in excess of £50,000.

Section 7; "Protective Actions – Creation of Reserve" of the account's terms and conditions say:

*"a. Regardless of any contrary provision in this Agreement, we may, in our reasonable judgment, determine that it is necessary to withhold, and offset amounts from, payments we otherwise would make to you under this Agreement or require you to provide us with additional security for your or any of your Affiliates' actual or potential obligations to us including all of your actual or potential obligations to us or any of our Affiliates under this Agreement or any Other Agreement. Such withheld payments are called a Reserve.*

*b. Some of the events that may cause us to establish a Reserve include:.....(v) our receiving a disproportionate volume (whether in value or number) of Disputed Charges at any or all of your Establishments.....*

*d. We may increase the amount of the Reserve at any time provided that the amount of the Reserve will not exceed an amount sufficient, in our reasonable opinion, to satisfy any financial exposure or risk to us under this Agreement (including from Charges submitted by you for goods or services not yet received by Cardmembers), or to us or our Affiliates under any Other Agreement, or to Cardmembers. You shall have no rights to any amount held in Reserve in accordance with this Agreement until all your obligations have been discharged to our reasonable satisfaction"*

AESEL have sent me technical records which show many disputed payments being raised with it against C. Given what the terms, as above, say about the creation of a reserve where there are disproportionate volumes of disputed charges, I'm satisfied AESEL acted both in line with the terms, and fairly and reasonably when creating it.

The question then becomes about the value of the reserve. In its most recent of submissions related to this point, AESEL have given me technical records from its internal systems which show four payments amounting cumulatively to £16,140 remain in dispute and unresolved.

Our Investigator has asked AESEL on several occasions to give this service a clear and detailed breakdown of what funds remain in the reserve, and what's still being withheld. I note C has told us they received £9,000 from AESEL, but AESEL had told us it was looking to release around £23,000.

Without better information I can't decide on what exactly is still under dispute, and what should be released. But based on the information I do have, I'm persuaded that AESEL should hold no more than £16,140 in reserve. That's because the information I have shows these funds are still under dispute.

AESEL have said these disputed payments all happened in 2022. I haven't seen any evidence that there were new payments for it to consider – but given the restrictions on the account, I wouldn't expect there to be.

If that's the case, and only £16,140 remains in dispute, I'm also satisfied that any funds in

excess of this amount should have been released to C in March 2023. That's because, I think that's a reasonable time for AESEL to have investigated any outstanding disputes. AESEL should pay C 8% simple interest from the 1 March 2023 until settlement on these funds as C's been deprived of using them.

When thinking of compensation for any distress and inconvenience suffered, I must consider the basis of the legal entity making the complaint. Here it is a limited company. That means I can't award it compensation for any distress or anxiety caused – that's because it cannot suffer these emotions as a company.

C has said it was facing eviction. But I note C still appears to have access to the business premises and their establishment in any case closes for business in the first two months of the year. I've also thought about C's ability to carry on doing business. Given C has told us they had another agreement with another merchant card issuer, I can't find they would have suffered any financial loss on future income.

C has said they have been able to get by without these funds otherwise. So taking all of this together, I won't be awarding any further compensation than that of the simple 8% for C being deprived of its funds.

### **Putting things right**

To put thing right, AESEL return any funds it holds in reserve above £16,140 to C. AESEL should also pay 8% simple interest on all funds above £16,140 from March 2023 up until settlement\*.

\* If AESEL considers that it's required by HM Revenue & Customs to deduct tax from that interest, it should tell C how much it's taken off. It should also give C a tax deduction certificate if they ask for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

### **My final decision**

For the reasons above, I uphold this complaint in part. I now direct American Express Services Europe Limited to put things right as above.

Under the rules of the Financial Ombudsman Service, I'm required to ask C to accept or reject my decision before 25 August 2023.

Ketan Nagla  
**Ombudsman**