

## **The complaint**

Miss E complains American Express Services Europe Limited (AESEL) registered a fraud marker at CIFAS, the national fraud database. She doesn't think it's done so fairly.

## **What happened**

I issued my provisional decision on this complaint and invited both parties to let me have their comments before I re-considered matters. Below is a copy of my provisional decision.

## ***What happened***

*Miss E held an account with AESEL. On 11 July 2023 it was credited with four payments of £100 each from a third party through bank transfers. The payments into the account were identified as fraudulent because the bank from which the funds had come, notified AESEL the following day that their customer had been the victim of a fraud.*

*AESEL reviewed the activity and loaded a CIFAS marker against Miss E, which resulted in the closure of some of her other account. Miss E contacted AESEL in August 2023 to complain after finding out about the marker. She said she'd not done anything to cause this and had been the victim of a fraud. But her complaint wasn't logged. Miss E tried contacting AESEL again and it responded. In summary, it apologised for not logging the complaint and offered £50 compensation to say sorry (this was credited to the account). But in relation to her concerns about the CIFAS marker, it didn't agree to remove the loading without sight of supporting information that Miss E had been the victim of fraud. It said what it had seen to date was information stating some of her other banks had severed ties with her, which wasn't enough.*

*Miss E asked us to look at her complaint and provided information, which comprised her credit file showing there had been attempts to apply for credit in her name, attempts to access accounts she held elsewhere using a different device/location to the one she had registered and a refund she'd had on a fraud claim with another bank. She felt this supported she was a victim of fraud around the time.*

*One of our investigators reviewed matters. She acknowledged the supporting information but didn't think AESEL needed to remove the marker. She noted that at the time of the credits Miss E had an outstanding balance of over £6,000 on her card. And the four payments plus another larger credit the same day of £4,901, which Miss E also said she knew nothing about had reduced her balance. She wasn't persuaded what benefit an unknown third party would gain from paying off her balance in this way when no one had access to her card, PIN and other details. The investigator thought the account activity ultimately suggested Miss E was aware of the payments.*

*Miss E disagreed. She referred to the evidence she'd provided and highlighted she'd also reported the matter to Action Fraud and the Police. She asked that her complaint be reviewed by an ombudsman.*

*During my review, the evidence from Miss E was put to AESEL, but it didn't change its mind on the CIFAS loading. AESEL provided a copy of a 'chat' that it says took place with Miss E*

and it on 7 July about paying her balance. It thought this was material evidence given that's what had happened when the incoming payments were made. Our investigator put this to Miss E. But she said she hadn't participated in the chat. She provided a copy of an email she received from AESEL's fraud department asking her to call it. She added that when she did, she was informed her contact number had been changed, so she immediately changed it back.

We sent a copy of this email to AESEL along with some other emails about her card not being added to apple pay. I requested further evidence from AESEL.

AESEL said it didn't have anything to show the email was in connection with a telephone number change and it provided contact notes of several calls it had at the time of the disputed activity. In the notes there was a record that Miss E had confirmed she's made the payment of £4,901 towards her card.

I am now ready to issue a decision.

### **What I've provisionally 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.

The marker that AESEL has filed is intended to record that there's been a 'misuse of facility' – relating to using the account to receive fraudulent funds. In order to file such a marker, it's not required to prove beyond reasonable doubt that Miss E is guilty of a fraud or financial crime, but it must show that there are grounds for more than mere suspicion or concern. The relevant guidance says, there must be reasonable grounds to believe that an identified fraud or financial crime has been committed or attempted and the evidence must be clear, relevant, and rigorous.

What this means in practice is that a bank must first be able to show that fraudulent funds have entered Miss E's account, whether they are retained or pass through the account.

Secondly, the bank will need to have strong evidence to show that Miss E was deliberately dishonest in receiving the fraudulent payment and knew it was, or might be, an illegitimate payment. This can include allowing someone else to use their account to receive an illegitimate payment. But a marker should not be registered against someone who was unwitting; there should be enough evidence to show complicity. To meet the standard of proof required to register a fraud marker; the bank must carry out checks of sufficient depth and retain records of these checks. This should include giving the account holder the opportunity to explain the activity on their account to understand their level of knowledge and intention.

Miss E says she doesn't know anything about fraudulent funds crediting her account. So, I need to decide whether I think AESEL has enough evidence to show fraudulent funds entered Miss E's account and she was complicit. And I'm satisfied it has. I'll explain why.

I've seen evidence from AESEL that it received reports from a different third-party bank saying that funds which entered Miss E's account were fraudulent. Miss E doesn't dispute this – but she says she has no knowledge of why those payments were made.

AESEL has also provided a copy of 'chat' that it says its cardholder had with it on 7 July – a few days before the incoming payments. It says this chat can only be accessed for the card/account in question. In this chat, I can see there's a discussion about repaying the balance. Miss E says she didn't participate in this, and that she'd only used the facility once

before. However, she's offered no evidence of how her personal security and account details could have been known. She's said she lived alone, hadn't lost her phone, and no one knew this information.

When our investigator put this evidence to Miss E, she said she'd got an email from AESEL asking her to call it, which she says she did. She said AESEL told her that her phone number had been changed so she immediately changed it back. AESEL says that it only has Miss E's current mobile number. But in any event, I'm afraid I don't find what Miss E has told us to be credible when looking at some of the other evidence. Because I've also reviewed the customer contact notes and calls that AESEL has provided from around the time of the disputed activity, and these suggest something different.

At the time, Miss E's account is overdue and in arrears and so she couldn't use her card. A call note made on 8 July says she wants to make a payment by bank transfer. The caller is aware of the minimum payment that's overdue at the time, £714 and says that they'd be making a payment from selling a car. The caller confirms Miss E's genuine email address as well which is also on her customer profile.

There's a further call note on 12 July. In this, the caller confirms a payment of £4,901 has been made by bank transfer when asked about it. I'm satisfied this call and others around this time could only have been made with Miss E's involvement/assistance as security is cleared and Miss E's mobile number is captured when trying to connect the call to the fraud department. This is the same number on our records.

The customer contact notes could only have been placed once security had been successfully passed. And what's on them contradicts what Miss E has told us about her not knowing anything about the incoming payments and her being a victim of fraud.

Once all the funds entered Miss E's account, they significantly reduce the outstanding balance, and this appears to be in line with the previous interactions of wanting to pay money on the account by transfer. Like the investigator, I can't see what an unknown fraudster would gain from reducing a debt that genuinely belonged to Miss E and the caller knowing specific details about what was overdue in July. I consider this is a material point, even when thinking about the other evidence Miss E has provided.

I'm unable to ignore the relevance of this fact and I've placed a greater weight on this in my considerations, particularly in light of the customer notes. I'm not suggesting Miss E didn't have other things going on with the accounts she held elsewhere, but I'm not seeing anything compelling to say that is linked to the activity on her AESEL account.

Overall, I consider the possibility of an unknown fraudster doing all of this without Miss E's involvement highly unlikely. Indeed, the evidence suggests Miss E was aware of what was going on. In the circumstances, I don't think AESEL has treated her unfairly in loading the marker with CIFAS given the evidence it has.

For completeness, I have also found the account was closed in line with the account terms and conditions.

Finally, there were some shortcomings in AESEL not logging and responding to Miss E's complaint, but I'm satisfied the apology and £50 payment into the account was a reasonable way to resolve that specific issue. So, for the reasons I've given, I'm not going to require AESEL to do anything further.

### ***My provisional decision***

*For the reason I've given, I don't intend to uphold this complaint.*

### **Responses**

AESEL said it accepted the provisional decision. Miss E said the marker had a profound impact on her ability to study, get a job and access account facilities. She maintained she'd been a victim and AESEL had taken too long to deal with things.

### **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 understand the marker has caused Miss E difficulties, but this isn't a reason for requiring its removal. Ultimately, AESEL had enough grounds to load the marker. It should have been more proactive in dealing with her concerns. But it acknowledged that in its response and it took reasonable steps to address the situation. I realise Miss E would like more but in light of the volume of evidence, I adopt my provisional decision in full as part of this final decision. I don't think AESEL treated her unfairly in loading the marker or closing her account. So, I won't be requiring it to do anything further to resolve this complaint.

### **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 Miss E to accept or reject my decision before 29 October 2024.

Sarita Taylor  
**Ombudsman**