



## **The complaint**

Mr W complains American Express Services Europe Limited ('AESEL') reported a default to the Credit Reference Agencies ('CRAs') when he was in an arrangement to repay his personal credit card. He's unhappy with how AESEL communicated with him.

Mr W wants the default marker on his credit file to be removed and for AESEL to pay him compensation.

## **What happened**

Mr W's personal credit card account with AESEL accrued arrears and was closed in July 2023. The account was passed to AESEL's agent to arrange a repayment plan with Mr W which wasn't successfully set up until January 2024.

Because of the circumstances and delays setting up the repayment plan, AESEL agreed to remove a default they'd reported to the CRAs and sent Mr W a cheque for £75 in compensation.

Mr W's first payment was set up for 28 January 2024 but this went unpaid as Mr W thought he'd arranged for repayments to start in February 2024. Mr W's payments were adjusted but Mr W didn't pay on 28 February 2024 as agreed. Mr W did make a payment to AESEL a few days later, but this was towards his business credit card account.

AESEL reported a new default to the CRAs in March 2024 and Mr W complained that this wasn't fair. AESEL agreed their agents hadn't warned Mr W that a default would be reported if his arrangement failed, so sent a further cheque for £40 in compensation to reflect their miscommunication. However, they wouldn't agree to remove the default as they said it had been correctly applied.

Mr W referred his complaint to the Financial Ombudsman Service but our investigator didn't uphold it. He thought the default was fairly reported as Mr W had missed February 2024's payment and he was eight months in arrears. He thought Mr W was aware a default on his credit file was a possibility as this had happened several months before, although that default marker had been removed. Our investigator thought AESEL could have communicated better but that their payment of £115 was fair to recognise this.

Mr W thought it made no sense that a default was reported so quickly when months had passed between July 2024 and January 2024 with little action on the part of AESEL or their agent. And he was concerned that he hadn't received arrears letters or a default notice.

Our investigator considered the matter afresh in light of Mr W's concerns but didn't change his view that the default had been inevitable and £115 compensation was fair for AESEL's miscommunication in these circumstances.

Mr W didn't agree, so the matter was passed to me 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.

I've taken into account any relevant law and regulations, the regulator's rules, guidance and standards, codes of practice and (where appropriate) what is considered to have been good industry practice at the relevant time.

I know this will disappoint Mr W but I agree with the findings of our investigator, and I've decided not to uphold this complaint. I'll explain why.

It's clear that AESEL had responsibilities under the Consumer Credit Act 1974 and obligations under the terms and conditions of Mr W's account. They also had regulatory responsibilities as this was a regulated agreement - these are set out in the Financial Conduct Authority's Handbook of rules and guidance. AESEL also had responsibilities in terms of what information they report to the CRAs - something the Information Commissioner's Office ('ICO') monitors. I also consider AESEL were responsible for their agent's actions here, as they were acting under AESEL's authority.

As Mr W had missed several payments I'd expect AESEL to send Mr W a notice of sums in arrears, and, if this didn't result in payments, a default notice. These are legal documents which are required before AESEL can take certain action in relation to the account – such as seeking payment of the full balance outstanding rather than instalments. AESEL have confirmed they haven't sent a default notice to Mr W and I acknowledge Mr W has concerns about this.

I think it important to explain there are different meanings of the term 'default'. Often a default will mean a default notice has been sent but not complied with, so a lender can take further action to pursue payment of the whole debt.

But the ICO refers to a 'default' as something that should normally be registered with the CRAs by the time an account is six months in arrears. The ICO says a default marker's purpose is to show financial difficulty or mismanagement on the part of the borrower, and that the relationship between lender and borrower has broken down.

This means AESEL didn't have to issue a default notice to report Mr W's default to the CRAs. However, AESEL were under an obligation to give Mr W a fair opportunity to address his arrears with them before reporting a default, and I think they did enough here.

It's clear that AESEL's agent took their time setting up Mr W's payment arrangement – and when this resulted in a default being reported to the CRAs this was removed by AESEL. The overall effect of the delay was that Mr W took a break from making payments towards this account. Mr W says it's not fair to say he 'stopped paying' when he didn't know who or what amount to pay, but it's clear he wasn't saving up in order to make a lump sum payment once communication with AESEL's agent was re-established. So I think Mr W was aware he wasn't paying his account and that arrears were accruing, and that AESEL were prepared to report a default to his credit file.

A payment arrangement was set up for significantly less than the minimum repayments, which gave Mr W a chance to repay his arrears and avoid a further default being reported. When Mr W missed January 2024's payment – which he said was set up too early – AESEL's agent rearranged the payments to start in February 2024, which I think showed forbearance.

It was only when 28 February 2024's payment was missed that AESEL reported a default to the CRAs.

I don't think clearer communication from AESEL or their agent would have avoided a default here. I think Mr W was already aware that he was in significant arrears, and that a default was a possibility given what had happened a few months earlier. And despite having a second chance to avoid a default, Mr W didn't pay the required payment on 28 February 2024, even though he'd specifically asked to pay on this date.

The ICO's guidance indicates a default should be reported to the CRAs by the time an account is six months in arrears. AESEL did report a default marker around this time but removed it, giving Mr W a second chance to avoid a default on his credit file. I think the default currently reported to Mr W's credit file accurately and fairly reflects that this second chance - the February 2024 arrangement - failed. In those circumstances I don't think the current default marker should be removed or amended.

AESEL accepted there were delays setting up the payment arrangement and sent Mr W a cheque for £75 to recognise this. AESEL also sent a cheque for a further £40 as they accepted they could have been clearer with Mr W about the consequences of breaking his arrangement. In the circumstances I think AESEL's payment of £115 is fair and reasonable to recognise their miscommunication.

For those reasons, I've decided not to uphold this complaint as I think AESEL's resolution to Mr W's complaint is fair in all the circumstances.

### **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 Mr W to accept or reject my decision before 10 March 2025.

Clare Burgess-Cade  
**Ombudsman**