

The complaint

Mr K complains American Express Services Europe Limited (AESL) unfairly blocked and closed his account and wrongly applied a Credit Industry Fraud Avoidance System ('CIFAS'- the UK's fraud alert service) marker against his name.

What happened

The detailed background to this complaint is well known to both parties. So, I'll only provide a brief overview of some of the key events here.

Mr K held an AESL credit card account with two cards, and following a review AESL sent Mr K notification of closure on 21 April 2023. Mr K was informed the account balance would need to be cleared and he would no longer be able to utilise his credit cards.

AESL loaded a CIFAS marker for '*misuse of facility*' against Mr K on 26 April 2023. Mr K says following this the accounts he held with other providers were closed down. In February 2024 Mr K made a subject access request with CIFAS and he discovered the application of the marker against his name by AESL.

Mr K raised a formal complaint about the handling of his complaint. Mr K explained that he had reported fraud on his account in March 2023 which shows that he was a victim, and AESL had failed to protect his account and carry out a proper review. Mr K highlighted the impact the CIFAS marker had on him – other accounts he held had been closed and he couldn't run his business. Mr K asked for the marker to be removed and for AESL to pay him £5,000 in compensation.

An Investigator at our service considered Mr K's complaint and recommended it be upheld. They considered the evidence presented by AESL to be insufficient in explaining why it had recorded a CIFAS marker against Mr K. It said AESL hadn't made any attempts to speak to Mr K about the alleged fraud and Mr K has shown that five other bank accounts were closed as a result of the application of the CIFAS marker. They also recommended that AESL pay for K £2,000 for the distress and inconvenience caused.

Mr K accepted the recommendation made, but felt further compensation was warranted. AESL didn't accept the recommendation and provided further evidence to support its actions. The complaint was reviewed again, and a different Investigator reached a new outcome based on AESL's submissions. In their revised recommendations, the Investigator explained the following:

- Mr K has confirmed nobody else had access to his cards, and although he had reported some transactions in March 2023 as unrecognised, these were reimbursed, and Mr K didn't report any further issues.
- AESL has provided enough information to show that it had reasonable grounds to believe fraudulent funds came into the account.
- AESL has met the burden of proof required to load the CIFAS marker.
- Mr K may be able to open a basic bank account elsewhere.

Mr K disagreed with the Investigator's review and provided further submissions. Mr K explained the marker was having a serious impact on him, and both AESL and our review had failed to consider key details. The Investigator reviewed Mr K's additional submissions, but their opinion remained unchanged.

Mr K didn't accept the Investigator's findings and maintained he had been treated unfairly. As no agreement could be reached the complaint was referred to me – an ombudsman – 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.

I appreciate Mr K was disappointed by the Investigator's opinion – especially as it was different to the initial Investigator on the complaint. I must highlight that our review of a complaint can change at Investigation stage, depending on the evidence available. I'd like to reassure Mr K that I've considered the whole file and what's he's said. But I'll concentrate my comments on what I think is relevant. If I don't mention any specific point, it's not because I failed to take it on board and think about it, but because I don't think I need to comment on it to reach what I think is a fair and reasonable outcome. No discourtesy is intended by me in taking this approach. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts.

Firstly, I am sorry to see Mr K has had cause for complaint. I don't underestimate the worry and anguish this situation has caused, and also the stress of dealing with the complaint about it. Having looked at the complaint fully, my review of the evidence has led me to the same overall conclusions as the Investigator previously set out and for much the same reasons. I will explain why.

Account closure

As a UK financial business, AESL is strictly regulated and must take certain actions in order to meet its legal and regulatory obligations. It's also required to carry out ongoing monitoring of an existing business relationship. This includes establishing the purpose and intended nature of transactions as well as the origin of funds, and there may be penalties if they don't. That sometimes means AESL needs to restrict, or in some cases go as far as closing, customers' accounts.

As Mr K is aware incoming payments into the account were reported as fraudulent and this resulted in AESL blocking and then closing the account. Having carefully considered this, I'm satisfied AESL blocked the account and then closed it in line with the obligations it must adhere to. In addition, AESL is entitled to close an account just as a customer may close an account with it. But before AESL closes an account, it must do so in a way, which complies with the terms and conditions of the account. Having reviewed the terms of the account held by Mr K, I'm satisfied AESL's decision to close the account is in keeping with them and appropriate in the circumstances.

I know Mr K feels AESL has acted unfairly given the lack of information provided to him about the information it relied on and the closure. Ultimately Mr K would like a detailed explanation as to why AESL took these actions. But AESL isn't under any obligation to provide further details to Mr K. I would add too that our rules allow us to receive evidence in confidence. We may treat evidence from regulated businesses as confidential for a number of reasons – for example, if it contains security information, or commercially sensitive information. Some of the information AESL has provided is information we consider should

be kept confidential. Having carefully considered this information, I'm satisfied AESL acted fairly in deciding to end its banking relationship with Mr K.

AESL has confirmed that Mr K's account was referred to its collections team on 27 June 2023, but it has confirmed that no adverse credit file data has been recorded against Mr K.

CIFAS marker

As part of its regulatory duties, businesses will use databases to share information. CIFAS is a fraud prevention agency, which has a large database on which information is recorded to protect financial businesses and their customers against fraud. When a bank is a member of CIFAS, it can record a marker against a customer when that customer has used their account fraudulently. This type of marker will stay on a customer's record for a specific period, depending on the customer's age and will usually make it difficult for that customer to take out new financial products. CIFAS forms an important part of the financial services regulatory framework and is intended to assist in the detection and prevention of financial crime.

In order to file such a marker, AESL is not required to prove beyond reasonable doubt that Mr K is guilty of a fraud or financial crime, but it must show that there are grounds more than mere suspicion or concern. CIFAS 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 such that the member could confidently report the conduct of the subject to the police.

What this means is that AESL will need strong evidence to show that Mr K has used the account to receive fraudulent funds. A CIFAS marker shouldn't be registered against a customer who has acted unwittingly – there must be evidence of a deliberate fraudulent action. The application of a CIFAS marker can have serious consequences for an individual, so this service expects business to carry out a thorough review of the available evidence.

My role is to establish if AESL has sufficiently demonstrated it has met the burden of proof set out by CIFAS to load the marker against Mr K. AESL has provided this service with details of the fraud report it received and its rationale for applying the marker. This included a review of Mr K's account activity. A key part of Mr K's complaint is that AESL didn't reach out to him directly or ask him any questions about his account before closing it and loading the marker. I understand Mr K's frustration with this, however AESL is able to determine itself what evidence it needs and what level of enquiry to pursue before loading a marker. In Mr K's case AESL has explained it had sufficient grounds to load the marker, and looking at the information it has provided in confidence to this service, I consider its decision fair.

When Mr K raised his complaint with this service, further details were obtained from Mr K about his account at the time. Mr K explained that in early January 2023 his phone number had been fraudulently ported to another network by an unknown person. Following this Mr K said a fraudulent application was made with a third-party bank and it loaded a protective marker against Mr K's name.

In addition to this Mr K reported transactions on his AESL card as unauthorised on 1 March 2023. These were reviewed by AESL and refunded to Mr K's account. Mr K argues this further demonstrates his accounts had been compromised. I've considered Mr K's comments carefully. I can see that following the report of unauthorised transactions Mr K was issued with a new card and PIN, and Mr K didn't report any further issues with his account. Mr K's online banking log shows he was actively monitoring his account – and this

includes the period when the funds that were reported as fraudulent entered his account. This suggests Mr K was aware of the activity on his account.

I've thought carefully about these additional points, and I don't consider it sufficient for this service to direct AESL to remove the marker. Mr K is essentially arguing that his account was being utilised by an unknown third party, and the marker has been applied based on an unverified claim from a third party. However, AESL is under a duty to take such claims seriously and at face value and assess claims in light of its regulatory duties. I must also highlight that further evidence has been provided regarding the fraud claim, and although I am unable to share details with Mr K, the evidence supports the premise that the payments received in were fraudulent.

Mr K has referenced a protective CIFAS marker that was placed against his name which suggests he is himself a victim of potential fraud. I've considered Mr K's submissions about this, and although this marker has been applied to Mr K, it doesn't detract from the evidence AESL has relied on to apply the marker against Mr K, and there isn't a direct connection between the two markers based on the information that I've seen.

I can see Mr K has provided details about the impact the CIFAS marker has had on his finances and professional life. The loading of a CIFAS marker can have serious consequences, and I am sorry to learn of the impact AESL's decision has had on him. Having reviewed Mr K's comments and the supporting evidence I don't find these allay the concerns regarding fraud and clearly show Mr K is entitled to the funds that entered his account. This means I agree that the evidence available equates to more than mere suspicion or concern of fraudulent activity. I therefore find that the marker was loaded fairly, and I don't consider its removal or compensation to be appropriate.

I appreciate Mr K will be disappointed with my decision, but I am satisfied AESL acted reasonably in taking this action to discharge its regulatory obligations. I hope my decision provides some clarity around why I won't be asking AESL to take any further action.

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 K to accept or reject my decision before 20 August 2025.

Chandni Green
Ombudsman