

The complaint

Mr L has complained to this service about a card he took out with American Express Services Europe Limited ("AESEL") which he says he couldn't afford to repay.

What happened

Mr L applied and was approved for an American Express card in or around April 2003.

Mr L says AESEL ought not to have granted him the account as his lending at the time was unsustainable. He says AESEL would have discovered this had they carried out better checks at the time.

Mr L entered into a debt management plan in April 2005 at which point his card account was cancelled. The account was formally closed by AESEL in January 2006.

Mr L complained to AESEL in August 2023. When responding to the complaint in September 2023, AESEL said the card was in fact a chargecard and so no actual lending had taken place. They also said that given how long it had been since the account had been opened, there was very limited information available. In terms of our jurisdiction to consider the complaint, AESEL said Mr L had made his complaint too late.

In my provisional decision dated 18 July 2025, having said that I was able to consider the complaint notwithstanding AESEL's objection, I explained why I wasn't intending to uphold Mr L's complaint. I acknowledged that what had started off as being a chargecard may have at some point before its closure become a credit card, the date of which was unknown. But I didn't think the standards and regulations in place at the time suggest that AESEL had made an unfair lending decision. I set out an extract below:

"Type of card"

AESEL has said that at the time Mr L applied for the card it was a chargecard rather than a credit card. That means it wasn't providing him with any credit. Mr L agrees with this but says the card nevertheless ended up being a form of credit because he was left having to pay the debt when he couldn't afford to pay the card.

Whilst I am sorry to learn of the financial challenges Mr L was going through at the time, I don't agree that this changes the position. If, as appears to be the case, Mr L was granted a chargecard product then this was not a credit relationship. The only uncertainty in my mind on this issue is when exactly Mr L's chargecard product could have changed to being a credit product - if at all – before it was eventually closed. Given that element of uncertainty, I don't currently think I can exclude the possibility that there may have been a short period of time when Mr L's card was operating as a credit card before the card was cancelled in April 2005. So I'll consider that possibility next.

What checks was AESEL expected to carry out at the time and what information did AESEL consider?

We've explained how we generally handle complaints about unaffordable and irresponsible lending on our website. However, most of that explanation relates to lending decisions made after the timespan we are looking at for when Mr L's card was active. We know that Mr L applied for the card in or around April 2003. This is before the FCA rules and guidance came in, in 2014, as well as the rules about Mr L credit which were regulated by the Office of Fair Trading. Any standards and expectations about lending decisions during this time were covered by the British Bankers' Association's Banking Code. From what I've seen, AESEL looked to be a member of the Association and so would be applying the Code when considering any credit applications it needed to approve. And it's fair to say that these standards and expectations would have applied at the time when Mr L was using his card. On that basis, if credit was in fact granted to Mr L at some point, AESEL needed to assess whether it felt Mr L would be able to repay it. That approach represented what was good industry practice at the time.

Our investigator said that AESEL didn't complete proportionate checks in order to satisfy itself that Mr L would be able to repay his card in a sustainable way. She said that AESEL ought to have obtained a better understanding of Mr L's financial circumstances. She then went on to say that if AESEL had carried out better checks it was more likely than not that it would have found the card to be unaffordable for Mr L, given the level of his financial difficulties.

It isn't surprising that there's only very limited information available to show what information would have been available to AESEL were it to have provided Mr L with a credit card. I think it's likely from what I've seen that it would have reviewed the information on Mr L's application and carried out a credit search. But as I haven't seen a copy of Mr L's application or the credit search, I can't speculate any further as to what these might have shown.

Like our investigator, I've also looked at the bank statements Mr L has sent us from around the time. It's fair to say that he was heavily reliant on his overdraft. I've seen evidence that Mr L took out a substantial loan for the purposes of consolidating existing debt in January 2003. He was also spending occasional sums on betting transactions. Such a level of borrowing might raise some concerns applying our more recent approach to unfair lending. But given what I've already said about the standards and regulations in place at the time, I wouldn't have expected AESEL to have requested to see Mr L's bank statements or other detailed information about his financial situation at the time.

To summarise, applying the standards and regulations in place at the time to when new credit was granted, I wouldn't have expected to AESEL to do more than it did, if and when Mr L's card went from being a chargecard to a credit card before it was eventually closed. All of this means that I'm not able to say that AESEL made an unfair lending decision.

Other considerations

I've also considered whether the relationship between Mr L and AESEL might have been unfair under Section 140A of the Consumer Credit Act 1974. That's on the basis that it's at least possible that Mr L was paying off credit on his card at a time when it would be a relevant consideration. However, for the reasons I've already given, I don't think AESEL lent irresponsibly to him or otherwise treated him unfairly. I haven't seen anything to suggest that Section 140A or anything else would, given the facts of this complaint, lead to a different outcome here."

AESEL didn't respond to my provisional decision.

Mr L has made a number of points, which I will respond to below.

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 would first like to thank Mr L for taking the time to provide me with a detailed and thoughtful response to my provisional decision. I will summarise his points as follows:

- Mr L suggests that AESEL's obligations under the British Banking Association Code went beyond simply processing applications. AESEL needed to prevent harm to him as an already-vulnerable consumer coming and there were good indications from his credit history to suggest this was the case.
- That AESEL being unable to provide his application or other documents from the time is unreasonable in itself and so it is unfair in effect to shift the standard of proof to his side.
- That AESEL's credit relationship with Mr L in terms of Section 140A of the Consumer Credit Act was unfair.

I've considered each of these points but ultimately they don't cause me to change my finding that AESEL didn't act unfairly.

I would add here that I consider I have already covered these points in my provisional decision. But given that this has prompted Mr L to raise further concerns, I will respond briefly here.

I should stress first that I have not seen evidence to show that Mr L's card account became a credit account and if so, how long that credit account was active. It's because I can't exclude that possibility that I have considered the basis on which such an account would have been approved.

The Banking Code requires that before being lent money on a credit card a business needs to assess whether a consumer will be able to repay it. That goes beyond just processing the application. The March 2003 Banking Code Guidance says that a consumer will be informed if a lender gives their details to a credit reference agency. The guidance also says that a lender may look at a customer's income and financial commitments, how they've handled their finances in the past and may also choose to use credit scoring. But there is no obligation to take *all* of these areas into account when making a lending decision.

Mr L also says that AESEL caused him lasting harm because it failed to prevent or reasonably assess the unaffordable debt he was left with. I again think this issue goes back to the question of the extent of the assessment AESEL needed carry out. To find out whether Mr L would be able to repay the card it would be asking itself a much narrower question than if it was looking to assess the long-term impact that having access to the credit might have on Mr L's financial welfare. I therefore think it's outside the scope of what AESEL needed to do.

All of this means that AESEL was required to take some steps to see if Mr L could repay the credit – and that went beyond simply processing the application. But I remain of the opinion that it didn't need to do more than it did.

Turning to Mr L's concerns about his application and credit checks no longer being available, I agree that given the amount of time that's passed this isn't an ideal situation, but nor is it an unusual one. But based on what I know of the standards and obligations in place at the time, I would not have expected AESEL to consider that additional checks, such as reviewing his

bank statements, would be considered to be necessary, given the scope of what an assessment was expected to include.

Finally, in relation to Section 140A of the Consumer Credit Act 1974, if I am to assume that this was relevant to the credit he took out at the time, my position remains that it would not affect the non-uphold finding I've reached. I've seen that the account was cancelled - at least to the extent that Mr L could no longer use the card - in April 2005 after AESEL had been told that Mr L had started a debt management plan.

Having considered Mr L's points and made these additional comments to address them, my non-uphold finding therefore remains unchanged.

Once again, I would like to say that I am I am sorry that on this occasion we've not been able to help Mr L further.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 1 September 2025.

Michael Goldberg

Ombudsman