

## **The complaint**

Mrs O complains that American Express Services Europe Limited (“AESEL”) has incorrectly recorded a default against her, and she’s been harassed by debt collection agencies.

## **What happened**

AESEL defaulted Mrs O’s credit card account in March 2024 and referred the outstanding balance to debt collection agencies.

Mrs O complained to AESEL. In summary, she said the default came about as a result of unwarranted charges applied to her account and she was being subjected to persistent harassment from AESEL’s appointed debt collection agencies.

In its final response, AESEL partially upheld Mrs O’s complaint. In summary, it said it did agree to stop communicating with Mrs O about her balance but failed to do so. However, it maintained it had recorded the default correctly. Mrs O didn’t agree and so she referred her complaint to our service.

The Investigator didn’t uphold Mrs O’s complaint. In summary, they said AESEL had correctly recorded the default and sent letters explaining this to Mrs O, and, AESEL had acted in line with The Consumer Duty. The Investigator also said Mrs O was given the information she needed to understand AESEL’s position on the dispute she’d raised about owing the balance. Overall, they didn’t find AESEL had done anything wrong.

Mrs O didn’t agree. In summary, she said it wasn’t fair for AESEL to have reported a default when there’s an unresolved dispute and doing so may breach data protection obligations and industry guidance. Mrs O also quoted case law which she said set out that a lender mustn’t report a default when they know the debt is disputed.

Following this, the Investigator spoke to Mrs O over the phone and explained given AESEL issued its final response on whether the debt was genuine, it had at that point investigated the matter and was satisfied the debt was owed. Mrs O disagreed and felt given she continued to dispute the debt owed, the default shouldn’t have been registered.

Because the parties couldn’t agree, the matter has been 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.

Having done so, I’m not upholding Mrs O’s complaint. I appreciate this will come as a great disappointment to her, but I’ll explain why.

I understand that Mrs O’s main issue with being chased for a balance on her credit card and the account being defaulted, is twofold. Firstly, that she doesn’t think she owes the balance – because she’d paid off her card in full and believes the outstanding amount to be a result of

an error on AESEL's behalf. AESEL credited and debited amounts on her account in relation to a merchant dispute and Mrs O claims there's an outstanding balance due to this. Secondly, that AESEL applied a default despite the balance being in dispute – and allowed its debt collectors to continue chasing her for the debt, despite her being told collection activity would stop.

I've previously considered Mrs O's complaint about whether she owes the balance on her card and have concluded in a separate decision that I'm satisfied she does.

Therefore, the focus of this decision is whether AESEL was right to default her account and continue collecting the debt. Mrs O has said that AESEL has breached its duties on several points. I'll explain however, why I don't think it has.

Mrs O is right in saying that the Consumer Credit sourcebook (CONC) sets out that a lender shouldn't recover a debt that's being disputed without providing clear justification or evidence to show its entitled to do so. CONC also sets out that debt recovery must be suspended where the customer disputes the debt on valid grounds – or what may be valid grounds.

Valid grounds do include where the amount of the debt being pursued is incorrect – and in this instance, Mrs O was disputing the entire balance on her account, given, from her perspective, she'd cleared the balance on the account and therefore the outstanding balance must be down to an error.

It's also right to say that where there's a dispute of this nature, it's down to AESEL and not Mrs O to establish that the amount owed is correct. AESEL must also provide Mrs O with information on the outcome of its investigation into the dispute.

But it's in relation to this last point, that I'm persuaded AESEL was entitled to record this default. I say this because, as our Investigator explained to Mrs O, AESEL communicated with her to set out why it felt the amount outstanding was correct. Irrespective of whether Mrs O agreed with this or not, AESEL had carried out an investigation, determined the balance was owed as a result of an additional credit in relation to the merchant dispute and sent a letter explaining this to Mrs O in September 2023, relevant extract included below:

*"... On February 12, 2023, a £837.00 credit was applied to your account basis [sic] the information we received from you. Additionally, the dispute was reopened on June 30, 2023, however the merchant advised us that a credit of £837.00 was applied to your account in January 2023. As a result, the amount previously credited had been reapplied to your account balance on April 5, 2023. Moreover, you have received the credit for £837.00 twice for two transactions."*

Whilst I appreciate that since then, Mrs O has had several complaints with our service and the issue has been ongoing, I'm satisfied that prior to this, AESEL had investigated Mrs O's dispute over the debt owed, satisfied itself that the debt was correct, and adequately communicated this to Mrs O, as above. It did this in September 2023, the debt wasn't passed to a debt collection agency until after this and the default wasn't applied until March 2024. The fact Mrs O continued to dispute this doesn't mean that AESEL then had to continue to suspend recovery action.

In addition to CONC, Mrs O has made reference to data protection guidance and case law – specifically, *Durkin v DSG Retail Ltd* [2014] UKSC 21. I want to make it clear that whilst our service does consider relevant rules, regulations and the law, we are not bound by them. In any event, in relation to the data protection rules and the case law Mrs O has referred to, these essentially support that whilst a dispute is ongoing, a lender shouldn't take recovery action. As explained above, I don't think AESEL did default her account and nor did it send

her account to a debt collection agency until after it had investigated matters, satisfied itself that the dispute was groundless and therefore that the debt was owed.

I'm also satisfied AESEL was legitimately entitled to default Mrs O's account. I say this because AESEL didn't receive payments that it should have received under the agreed terms, meaning the account was in arrears – and it sent letters to Mrs O in relation to this, giving her the opportunity to pay – and sent a default notice, in line with its obligations. Contained within these letters, AESEL provided offers of support to Mrs O.

Mrs O refers to fairness principles, which have now been incorporated into the Consumer Duty. As our Investigator has explained, I too think that AESEL has fulfilled its duties, by providing clear information about the arrears, what Mrs O needed to do, and what would happen if she didn't pay. It also offered support where relevant. As explained above, I think AESEL set its position out clearly in relation to the dispute.

Mrs O raised the point that the default ought to have been registered earlier, given the lack of payments towards the account. She last made a payment in May 2023, and the account wasn't defaulted until March 2024. However, whilst a payment was missed in June 2023, the minimum payment required was £50 at that point. The following month, AESEL credited interest to Mrs O's account which meant a payment wasn't due – and this effectively would have cleared the previous arrears too. So, for the month of August, Mrs O's payments were recorded as up to date. Therefore, arrears started building again around September 2023 and AESEL recorded the default around six months later – which is in line with the relevant guidelines, and I don't think unreasonable here.

I understand Mrs O wasn't happy about being chased for the debt by the debt collection agencies and says she felt harassed. Only a court can decide if a consumer has been "harassed". But having reviewed copies Mrs O has provided of at least some of the debt collection agencies' contact with her, I don't think the frequency of contact was unreasonable. AESEL was entitled to collect the debt via debt collection agencies given the debt was owed and whilst it appears it said it would stop doing this – but didn't – I can see it stopped recovery once Mrs O raised this and effectively "shelved" the debt in October 2024. It also apologised to Mrs O for not stopping recovery when it said it would. I think this goes far enough and I won't be asking AESEL to do more to put things right here.

I appreciate this has been a very long and drawn-out process for Mrs O and I'm sorry it has taken so long to reach this point. I also appreciate she will be very disappointed by the outcome of this decision, and I don't doubt that a default on her credit file will impact her. I'm very sorry that this is the case, but having reviewed matters impartially, I don't find that AESEL has made an error here. I won't therefore be telling it to make any amendments to the way it's recorded this default and nor am I telling it to do anything else to put things right.

**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 Mrs O to accept or reject my decision before 7 January 2026.

Sophie Kyprianou  
**Ombudsman**