

## The complaint

Mr R complains that American Express Services Europe Limited (AESEL) trading as American Express treated him unfairly when he asked for a credit balance to be returned to him from his credit card.

## What happened

Mr R held an AESEL credit card which accrued cashback when he made transactions. The cashback is applied to the account annually. Around March 2023 AESEL withdrew Mr R's credit facilities and closed the account following a credit review.

The terms and conditions of the AESEL card say:

***'What happens if we close your Card Account***

*If we close you Card Account in accordance with the Card Account agreement, you will lose the cashback that has been earned but not yet applied to your Card Account as an annual credit.'*

AESEL did not pay Mr R the cashback that had been accruing on but hadn't yet been credited to his account.

Following the closure of his account Mr R had various refunds from merchants to his card resulting in him having a credit balance of over £300. At the beginning of April, he asked for this balance to be sent to him by cheque, which AESEL agreed to, however it didn't send Mr R a cheque. So, Mr R complained to AESEL about the above points.

AESEL said once it had completed its checks on the balance it realised it needed further information in order to process the payment. It said it wrote to Mr R on 19 April asking for the information it needed but hadn't received a response. It went on to say when Mr R called up it should have raised a complaint sooner and offered a gesture of goodwill of £25 to recognise this.

AESEL felt that it had been right to retain the cashback balance that Mr R had been accruing on his account as it had acted inline with the terms and conditions of the account.

Mr R remained unhappy and so brought his complaint to this service. After initially rejecting the complaint our Investigator partially upheld Mr R's complaint, in summary he said:

AESEL had acted fairly in asking Mr R for the extra information it needed regarding the credit balance as this was in line with its Anti Money Laundering (AML) policy. He was satisfied that AESEL had sent Mr R a letter asking for the information it needed but accepted that Mr R probably hadn't received it. He felt AESEL could have been clearer in its communications with Mr R about this matter and asked it to pay Mr R a further £75 to reflect this.

He felt that AESEL had acted inline with the terms and conditions when it had withheld the cashback that had been accruing on Mr R's account.

AESEL agreed with the investigator's findings. Mr R didn't. when responding to the findings, he did provide the information AESEL needed to process the refund. However, he said he feels that AESEL is hiding behind small print and that to keep his annual fee and the cashback is unfair. He feels this term should be highlighted to consumers before they take out the card.

He also feels that AESEL caused him unnecessary hardship when it didn't send him the cheque as he was relying on those funds to pay his expenses. He also thinks AESEL shouldn't have expected him to invest so much time and effort into getting his own money back. And that they used inaccurate information during this process. He would like AESEL to pay £5,000 to resolve matters.

As no agreement has been reached 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.

I realise that I've summarised this complaint in less detail than the parties and I've done so using my own words. I've concentrated on what I consider to be the key issues. The rules that govern this service allow me to do so. But this doesn't mean that I've not considered everything that both parties have given to me. I'll address each point in turn

### **Cashback**

I understand that Mr R feels AESEL's reliance on the terms and conditions here is unfair and that the term itself is unfair, but I don't agree. The terms and conditions of the account are clear and not misleading and when Mr R took the account, he would have been provided a copy of these.

Cashback is a benefit of the particular account Mr R had with AESEL. Having looked at the terms and conditions I can see cashback is paid annually and if the account is closed by either party before the cashback is paid, it is lost. So, I can't say AESEL acted unfairly when it didn't pay Mr R the cashback he had been accruing, which I can see that up until his April 2023 statement had been around £81.

Mr R has also argued that he paid an annual fee of £25 to have this cashback card and so AESEL shouldn't be allowed to keep the fee and the cashback. Having looked at the benefits of the card I can see that enhanced cashback is only one of the benefits that is provided for the £25 fee. So I don't agree that AESEL shouldn't be allowed to keep the fee as Mr R had use of the other benefits for the time, he had the card. So, I'm not upholding this aspect of his complaint.

### **Credit balance refund**

There appears to have been a lot of confusion between Mr R and AESEL about what information was needed to return the funds to him and why it was needed, so I think it might be helpful to set that out clearly here.

AESEL has explained to this service, when there is a credit balance on an account, as part of its internal process and its obligations under AML it has to return the funds to the original source. In Mr R's case the reason for the credit balance was multiple refunds from

merchants (retailers) as a result of him returning goods he had purchased. So, in instances like this AESEL then returns the funds to the account from which the original transactions were paid. This means the account the funds came from when Mr R paid for the transactions when they originally showed on his AESEL bill.

In this case AESEL noticed that Mr had made payments to his account, for some of the original transactions from an account he wasn't named on. It was this that caused AESEL to need the further information and that is why it asked Mr R to complete a third-party form.

Mr R says he didn't receive any letter from AESEL, and I accept that, but I have seen a copy of the letter and a system note showing it was sent on 19 April 2023. Because of this I'm satisfied it was sent, and I can't fairly hold AESEL responsible for failings in the postal system, so it follows I can't say it's done anything wrong here.

However, I've thought about what Mr R has said about being reliant on the funds. And I appreciate that may have been the case, but Mr R knew in May 2023 when AESEL issued its final response to his complaint, that he needed to provide more information for the payment to be processed. But he still didn't provide this information until August 2023 and so I think he could have done more to mitigate this delay. Because of this and the fact I'm satisfied AESEL did write to Mr R on 19 April 2023 I don't consider AESEL are responsible for any significant delays in the payment.

I'm content that AESEL needed the extra information to be able to process the payment and acted fairly in asking for it before doing so. Having said that I do think AESEL could have communicated better with Mr R, explaining properly why it needed the information. As well as letting him know when he called that the cheque was not being processed and why. So, for this I think it should compensate him. And I think the £75 suggested by the Investigator in addition to the £25 initially offered by AESEL, is appropriate and in line with what I'd expect in the circumstances.

I know this isn't the answer Mr R wanted and he will be disappointed with this outcome. But my decision ends what we – in trying to resolve his dispute with AESEL– can do for him.

### **Putting things right**

AESEL should pay Mr R a total of £100 to compensate him. It is entitled to deduct any amount already paid to him under this complaint.

### **My final decision**

For the reasons set out above, I currently uphold this complaint and I require American Express Services Europe Limited (AESEL) trading as American Express to carry out the actions as set out under the 'Putting things right' section of this decision

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 15 January 2024.

Amber Mortimer  
**Ombudsman**