

The complaint

Mr D complains that American Express Services Europe Limited (AESEL) applied a refund to clear the outstanding balance on his late sons' credit card.

What happened

Mr D's son passed away in March 2023. On 5 April 2023 Mr D notified AESEL and emailed a bereavement notification form.

Mr D's son had booked flights for December 2023. Mr D cancelled the flights and the airline refunded £2018.42 to Mr D's sons' card on 29 April 2023.

AESEL used part of the refund to settle the outstanding balance on the account which was £1570.30.

Mr D complained to AESEL. He said the refund should have been passed to him as executor of the estate so he could pay debts in the correct order of priority.

In response, AESEL said that if an account holder passes away, any sum outstanding will be referred to its probate solicitors to collect any monies owed. It said that because there was a debt owed on the account at the date of death, any refunds received would be applied to the outstanding balance. AESEL said it wouldn't send the full refund to the estate because there was a balance owed on the account of £1570.30. It said that having applied the refund it owed the estate £498.59.

AESEL upheld some customer service aspects of the complaint and paid compensation of £100.

Our investigator didn't think that AESEL had acted unfairly by allocating the refund to the outstanding balance. But he thought the compensation wasn't sufficient and said this should be increased to £250.

Mr D didn't agree. He said the account should have been closed when he emailed the bereavement form and that at the time the refund was issued it belonged to the estate.

I issued a provisional decision in which I upheld the complaint. I said that AESEL accepted that it had received the bereavement form on 5 April 2023 but hadn't provided any explanation as to why the account wasn't cancelled on receipt of the form. I said that this is what should have happened and that if it had, then the refund from the airline, which was issued on 29 April 2023, would've been returned to the estate. I said that by applying the refund to the balance AESEL had effectively preferred themselves over other creditors of the estate. I said I didn't think AESEL had acted fairly by retaining the refund and hadn't been able to point me to any terms and conditions to show that they were entitled to apply a refund received after death to reduce an account balance. This was in contradiction to AESEL's final response in which it had said that its probate solicitors would collect any monies owed in the event of an account holders' death.

I concluded that AESEL hadn't acted fairly by applying the refund to the account and said the whole refund of £2018.42 should be returned to the estate. I said that the balance should then be passed to AESEL's probate solicitors who would liaise with the estate as to settlement of the account.

I said that I agreed with the investigator that compensation of £250 was fair.

I invited both parties to let me have any further arguments they wished to raise.

Mr D replied and said he accepted my decision. AESEL replied and said its bereavement team worked on a service level agreement of four weeks, which meant that the refund was received within this time. It said the delay in closing the account was due to staffing levels at the time, but this didn't affect the fact that the refund was received within the four week period. AESEL also said it wished to express condolences to Mr D's family.

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 account of what AESEL has said but it doesn't change my decision. AESEL hasn't shown me any terms and conditions which allow it to retain a refund issued post death. Its own comments regarding accounts with balances being referred to its probate team are at odds with the retention of the refund. I remain of the view that the whole refund must be returned. I agree with AESEL that this will lead to a debt for the estate which will need to be settled.

Putting things right

American Express Services Europe Limited must:

Account to the estate for the full refund amount

Pay compensation of £250 to Mr D

My final decision

I uphold the complaint. American Express Services Europe Limited must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask the estate of Mr D to accept or reject my decision before 4 April 2024.

Emma Davy
Ombudsman