

The complaint

Ms B complains that American Express Services Europe Limited (AESEL) has unreasonably declined her request to use the points from her credit card for travel in a way that would allow her to manage her physical disability.

What happened

Ms B said she had AESEL companion travel vouchers with expiry dates of June and October 2023 which she hadn't been able to use. In January 2023, she asked AESEL to write to its partner airline to request an extension to the vouchers on medical, compassionate and disability grounds and provided evidence, but in February 2023 her request was declined.

Ms B said she received no explanation from the airline about why it wouldn't do this, and to avoid this happening to her other voucher she tried to book a trip for August 2023. Ms B said she was encouraged by the airline to make a further request for amendments, but she hadn't heard the outcome of this before the voucher expired.

In respect to her October 2023 voucher, Ms B found a flight, but was limited by the airline's and AESEL's terms to economy class, which for long flights would be harmful to her health. Ms B couldn't proceed with the booking and wrote to AESEL challenging the fairness of the terms for someone with a disability. Ms B thinks the prohibition on upgrades for vouchers doesn't account for disabilities, whereas the use of the term 'companion voucher' by AESEL is normally associated with disability-related exemptions. She said she's spent £24,000 on her AESEL card to qualify for the vouchers, and she considers the term to be unfair and discriminatory in its lack of reasonable adjustments.

AESEL responded to Ms B to say it wouldn't deviate from its terms and conditions, even on the grounds of her disability, and these state that companion vouchers are non-transferable. It said in exceptional cases it would extend a voucher, but Ms B had advised that the main reason for non-use was due to seat availability, with the further issue of her disability. AESEL said it hadn't made any errors and didn't uphold Ms B's complaint. Ms B said the primary reasons for being unable to travel were bereavement; the nature of her disability, and need for travel assistance abroad. She acknowledged the unavailability of seats on other occasions which had prevented her use of the voucher, but AESEL had ignored this.

Ms B was dissatisfied with AESEL's response to her complaint and referred it to our service. She considered AESEL's position on her voucher to be discriminatory. She said AESEL had been deliberately misleading about the reason she couldn't use her voucher and its terms didn't prohibit an upgrade when using the companion voucher. She thought that by failing to make reasonable adjustments on account of her disability, she was prevented from using the voucher and AESEL and the airline are in breach of the Equality Act. She said AESEL hasn't offered any alternative benefit, which she would have expected in light of her disability. She wants compensation and points towards a new companion voucher.

Our investigator didn't recommend the complaint be upheld. He said Ms B asked AESEL if it could extend her travel vouchers beyond the expiry date and use towards upgraded seats, due to her disability. He said as the vouchers are provided by an airline, it's understandable

AESEL put Ms B's request to them. The airline said it wasn't able to meet Ms B's request as this went against the terms and conditions of the agreement for their use.

The investigator said AESEL had tried to help Ms B, however, her request wasn't part of the airline's agreement so it couldn't be met. This wasn't AESEL's fault, and we can't tell a business to change its policies or terms and conditions. He said Ms B feels discriminated against by AESEL, but he didn't think the evidence showed this, or that it had acted unfairly. He said we don't have the power to say whether a business has breached the Equality Act 2010, as this is a matter for the courts to decide.

Ms B wasn't satisfied with the investigator's response and requested an ombudsman review her complaint. She said he had completely misunderstood her complaint which was brought primarily because the terms and conditions of the AESEL companion voucher, *'dictate that passengers can only travel in economy class regardless of whether or not the class is suitable for their needs. This goes against air regulations for disabled passengers.'*

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 was sorry to learn about Ms B's difficult personal circumstances and her bereavement, leading to her not being able to use her companion travel vouchers. I've considered whether AESEL has followed the terms and conditions of the agreement in place and looked at whether it has treated Ms B fairly.

I can see that Ms B feels that AESEL has discriminated against her in that it wouldn't change its policy, as reflected in the terms and conditions of her credit card agreement, on the grounds of her disability. The credit card agreement concerning the points Ms B has accumulated includes Ms B, AESEL and its selected airline partner.

Ms B understands that this complaint only concerns AESEL and so we are unable to consider the airline's actions, and this includes her calls with the airline. This causes difficulty for her complaint because she is essentially looking for agreement to transfer the booking specified by the terms, whereas, as would be expected, the availability of seats and terms concerning bookings, and transferability are within the say so of the airline. Ms B can bring a complaint to the airline about its decision, but this may not be within our jurisdiction to consider.

AESEL put Ms B's request for a transfer to a higher-class seat to the airline, but it has relied on the following terms to decline her request.

'5. The Companion Voucher allows the main account holder to book an economy companion seat or solo traveller seat. 8. Companion Vouchers may only be used for bookings subject to availability and [the airline] offers no guarantee that Cardmembers will be able to book a seat for themselves or for a companion on a specific flight 26. Companion Vouchers are non-extendable and non-transferable.'

Ms B cannot understand how with disability awareness anyone would enforce a rule that requires people to travel in a way that may be medically unsuitable for them in order to take up a travel benefit.

I don't doubt Ms B's point that travelling in economy for both long and short haul flights, has proven detrimental to her health on account of her medical condition and she has provided medical evidence of her condition. She doesn't think AESEL has made any reasonable adjustments on account of her disability. Our investigator is correct to say that our service doesn't have the power to say whether a business has breached the Equality Act 2010. We

do consider if a business has treated a consumer fairly and reasonably but a determination under the Equality Act is a matter for the courts to decide.

Whilst I can understand why Ms B thinks she's been treated unfairly, the agreement for the use of her credit card points is limited by availability, non-transferability and the airline's conditions of use. AESEL acted as a conduit in this respect, passing on the airline's decline of Ms B's request. I think it has acted reasonably in relation to the issues she has raised, and I don't think it has made an error in its handling of her credit card points.

Even if I were to conclude that it would be fair for AESEL to extend the life of Ms B's recently expired voucher in the light of her difficult circumstances, I still don't think it should have to allow an upgrade on the airline tickets. And so an extension on its own would not be of use to Ms B for the reasons she has stated.

Notwithstanding this, AESEL has stated that it is unable to make the amendments to the vouchers itself, and this is supported by the terms of the agreement that make this a reserved issue for the partner airline. As a gesture of goodwill, I asked AESEL to approach the airline to request an extension of Ms B's voucher. AESEL said it had contacted the airline three times to consider the request, but it has not responded.

Although this doesn't affect the outcome of this final decision, which I am unable to uphold, I think it may be worth Ms B contacting the airline herself to see what may be possible with regard to her vouchers.

My final decision

For the reasons I have given it is my final decision that the complaint is not upheld.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms B to accept or reject my decision before 9 January 2024.

Andrew Fraser
Ombudsman