

The complaint

Mr P complains about the way American Express Services Europe Limited (AESEL) trading as American Express handled a claim he made in respect of a transaction on his credit card.

What happened

The details of this complaint are well known to the parties. So I will only cover these briefly here and focus on giving reasons for my decision.

Mr P used his AESEL card to purchase flights for his granddaughter and her partner from a travel agent ('the agent'). The booking was made in April 2020 and the flights were due to depart in February 2021. However, due to the circumstances around the pandemic the flights were cancelled.

Mr P was unable to get a refund from the agent (which later went out of business) so contacted AESEL to raise a dispute. Mr P is unhappy with the outcome and the way AESEL handled things. He said it kept asking him for the same information and took too long.

AESEL did not uphold the dispute it said it was out of time to raise a chargeback and that Section 75 of the Consumer Credit Act 1974 ('Section 75') did not apply.

Our investigator did not uphold the complaint either. She noted that any chargeback would be out of time and that Section 75 did not apply to the transaction because of the nature of the agreement.

Mr P disagreed so the matter has come to me for a final decision. I issued a provisional decision as follows:

I won't comment on all the evidence I have seen – only what I consider to be particularly relevant. This isn't intended as a discourtesy but reflects my role resolving disputes informally.

Firstly, despite the unfortunate situation with the cancelled flights it is important to note here that AESEL is not the provider of travel services. So when deciding how it handled the claim I consider its particular role as a provider of financial services. In doing so I consider chargeback and Section 75 relevant considerations as they are ways AESEL might reasonably be able to help Mr P get his money back.

In brief, I don't think that AESEL is fairly liable for providing a refund to Mr P. I will explain more about my reasons for this in a moment. However, I do think AESEL did not handle the claim as well as it could have done – so, I am making an award to reflect this.

Chargeback

Chargeback is a way AESEL might have been able to claim back a refund for Mr P. However it is limited by the particular card scheme rules. One of the key issues with chargeback is the specific time limits in order to raise a claim.

Here AESEL says that when Mr P got in touch with it (October 2022) they had no option to raise a chargeback as it was out of time.

I have considered what AESEL has said and I think this is correct. Generally for a chargeback reason like 'service not provided' (which would be relevant here) there is 120 days to raise said chargeback from the date of expected service. Clearly Mr P was out of time as the cancelled booking was set for February 2021.

I have also thought about whether another chargeback reason would have been in time – such as that relating to a credit not being processed. But it appears the refund was approved in December 2021 which is more than 120 days before Mr P got in touch with AESEL to raise a dispute in any event.

Overall, due to the strict chargeback timeframes and when Mr P got in touch with it I don't think AESEL acted unfairly in not pursuing a chargeback here.

Section 75

Section 75 can allow Mr P to make a claim against AESEL for breach of contract or misrepresentation by a supplier paid using his credit card in respect of specific goods or services.

However, certain criteria must be met for Section 75 to apply. AESEL says it hasn't been – specifically the requirement for a valid 'debtor-creditor-supplier' agreement between the parties.

I note there has been a suggestion that the way the payment to the agent was processed means there isn't a valid DCS agreement. I don't necessarily agree with that – as simply facilitating a transaction doesn't always mean there won't be a DCS agreement. However, I do agree that the other elements here mean there isn't a valid DCS agreement – so I don't intend to cover this other aspect in any detail.

I don't think Mr P is able to make a Section 75 claim in respect of the actions of the airline here, or the travel agent which booked the tickets. I say this because:

- Mr P didn't pay the airline for services using his AESEL credit card, and he doesn't have a contractual agreement with it in any event (his family members do); and*
- although Mr P paid the agent for services using his credit card, he has no contract with it – the booking was made by his granddaughter – and the paperwork clearly confirms she is the agent's customer – not Mr P.*

In deciding that Mr P does not have a contract with the agent I have had regard to its archived terms and conditions from around the time of the booking (we don't appear to have the terms on file previously). I think these likely reflect the contractual position at the time the booking was made. These show that the agent is contracting with the person making the booking arrangements and do not indicate that by simply paying for the booking Mr P has a contract with it for services rendered.

I know this seems quite technical – but in respect of Section 75 AESEL are only fairly liable for a 'like claim' which Mr P would have in court against a supplier. Here, despite wanting to do something for his family by paying for flights I don't think Mr P would be in a position to take the agent he paid to court – so it follows that he doesn't have a like claim against AESEL. And it hasn't acted unfairly in declining his claim.

Mr P has maintained that AESEL was very slow to handle his claim and kept asking him for information it already had. I can see that Mr P first got in touch with AESEL in October 2022 yet it didn't give him an outcome to his claim until February 2023. It took over four months to deal with the matter and I can see it kept going back to him asking for more information – yet it wasn't clear to me what it needed to be able to consider the dispute and carry out an investigation or that it didn't already have sufficient information to understand things. It would also have been reasonably clear at an early stage that the chargeback was out of time.

I don't think the letters AESEL sent Mr P were particularly clear and kept telling him the matter was going to be closed. At one point AESEL told him to go back to the supplier to resolve things (even though it could have fairly looked into a Section 75 claim). Furthermore, despite going back and forth with Mr P over many months AESEL appears to only have started to consider Section 75 in February 2023. In early February 2023 it sent him a Section 75 claim form. I question why it took AESEL months to send him this and begin to look at Section 75. I can see Mr P was frustrated as a lot of the information AESEL asked for in this form he noted he had sent it already.

Mr P was clearly frustrated with how AESEL handled things. I know it has said it doesn't have a timeframe set down in law to handle claims. However, the FCA has issued guidance in April 2021 which is relevant here that states:

We expect credit and debit card providers to handle section 75 and chargeback claims in a reasonable timescale, and remind firms of their obligations to treat customers fairly. If there are delays in processing claims, firms should clearly explain the reason for the delay.

I don't think the claim was handled as well as it could have been particularly around communication and reasonable timescales. With all this in mind I think that AESEL should pay Mr P £150 for the distress and inconvenience he has suffered as a result of its claim handling in the particular circumstances here.

My provisional decision

I partially uphold this complaint and direct American Express Services Europe Limited (AESEL) trading as American Express to pay Mr P £150 compensation.

I asked the parties for comments.

AESEL accepted my findings.

Mr P's responded as follows (via his representative), in summary:

- the agent kept promising a refund up until October 2022 when he contacted AESEL so the chargeback timeframe should kick in then (and at no point has he stopped pursuing this so should not be over any timeframe);
- if he had bought other goods for his family that didn't arrive he questions whether AESEL would be happy to give a refund because their client has not received the goods they have paid for;
- society should protect those using credit cards for large purchases like this and he has been with AESEL for many years now and when he needs protection he has not received it – this has caused endless stress.

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 am very sorry to hear about how this situation with the flight cancellation has impacted Mr P and his family and the stress it has caused. However, the submissions made on Mr P's behalf do not change my view on the outcome here. I still consider my provisional findings fair and reasonable for the reasons given in said findings (as copied above).

It is worth underlining that the timescales for chargeback are specified by the card scheme – so even though Mr P was chasing a refund for a while after it was promised and being told it was coming this does not extend the timeframe relating to raising a chargeback for a credit not being paid. So I still don't think chargeback had a reasonable prospect of success for reasons I have already given.

Furthermore, my findings are not in respect of other purchases Mr P has made or might make and I am reluctant to cover hypothetical situations regarding the 'debtor-creditor-supplier' agreement as this is case specific. However, what is key here is that Mr P is not the customer of the agent even though he used his credit card to make the payment. So I don't consider he has a claim against AESEL in respect of Section 75.

I acknowledge Mr P's points about the amount of money spent here and his customer loyalty to AESEL. I also acknowledge that there is often a degree of additional protection available when spending on a card. However, any protections are subject to limitations. In this case I am unable to fairly say that AESEL as a provider of financial services should have paid out a refund here because of the specific limitations around raising chargeback disputes and Section 75 claims.

I do still think AESEL's customer service could have been better – and it appears to agree with me. It should pay compensation for the reasons I have already given in my provisional findings.

Putting things right

AESEL should pay Mr P the compensation as set out below.

My final decision

I partially uphold this complaint and direct American Express Services Europe Limited (AESEL) trading as American Express to pay Mr P £150 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 10 November 2023.

Mark Lancod
Ombudsman