

The complaint

Mr H is unhappy with how American Express Services Europe Limited (AESEL) handled a claim he made to it.

What happened

Mr H bought two flight tickets from an airline using his AESEL credit card. He says the following day he called who he thought was the airline to confirm all the details.

Mr H says the operator led him to believe it was a representative of the airline and that in order to confirm his ticket details it had to re-book and cancel the old tickets.

Mr H says he later discovered that he wasn't talking to a representative of the airline but an independent travel agent. The agent had billed him for two additional tickets and not cancelled the original booking he made with the airline.

Mr H says he has been misled and scammed – he doesn't think the agent actually booked him any tickets – it simply charged him again for nothing. He raised a dispute with AESEL.

AESEL says it raised a chargeback. It says it followed the dispute process correctly but the documents from the agent do not confirm a refund is due to him and state the ticket he booked with it is non-refundable.

Mr H referred the matter to this service. Our investigator didn't uphold the complaint – he confirmed that the agent had made a non-refundable booking and could not see where in the documents it had agreed to cancel his other booking.

The matter has come to me to consider.

I issued a provisional decision on the matter. In this I said:

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

My role here is to resolve dispute informally – so I won't be commenting on all the evidence raised by the parties. I will be focusing on the matters I consider central to this complaint.

When looking at whether AESEL has acted fairly I consider the relevant card protections which were available to it. In that sense, I think chargeback and Section 75 of the Consumer Credit Act 1974 ('Section 75') are relevant here.

Essentially, I believe this dispute centres around what Mr H says he was told by the agent on the phone and whether he received the service it promised. While chargeback can be relevant to situations like this I can see that AESEL discontinued the dispute here.

I understand the chargeback scheme is limited by the particular rules available and that in some cases these might not place weight on certain types of evidence such as oral

testimony. So I can see how chargeback might not have been suited to this particular case which centres on a phone call. Although I think (and as will become evident from my analysis below) there was possibly a case for a dispute being raised for a service not having been provided. However, because of my findings below in respect of Section 75 I don't consider it necessary to go into this in any further detail at this point in time.

I don't see where AESEL had considered Section 75. And I think it should have done so here as Mr H used a credit card to pay for the service from the agent and his claim centres around misrepresentation.

Section 75 enables Mr H in certain circumstances to make a 'like claim' against AESEL for breach of contract or misrepresentation in respect of an agreement he has for goods or services financed by the credit card.

There are certain technical criteria in order for Section 75 to apply relating to the cost of the goods or service or the overall nature of the agreement. I note here Mr H contracted directly with the agent for services within the financial limits for a Section 75 claim. So I have gone on to consider if there is a breach of contract or misrepresentation by the agent in respect of the service it provided.

Where matters are unclear I make my decision on what I consider is most likely to have occurred. It is important to note this here, particularly where some matters hinge on a phone call which the agent has been unable to supply a recording of.

My starting point is that when Mr H spoke to the agent he had already booked airline tickets for him and his partner directly with the airline. Mr H says he did this on the airline's website on 16/8/22. I have seen the booking confirmation which the airline later sent him which is headed 'Thank you for using [airline] on-line' with a particular 6-digit booking reference number which for the purposes of this decision I will refer to as 'R1'. Furthermore, I can see on Mr H's statement that a transaction total amount of £1786.12 was charged to him by the airline on the 16/8/22.

Mr H says that the following day (17/8) he was yet to receive the information from the airline confirming all of his flight details. He wanted to confirm these and make sure everything was as agreed so he called a number he found online which appeared to be for the airline's customer service. He says the operator led him to believe that he worked on behalf of the airline. Mr H says that in order to confirm all the details of his ticket the operator told him that he needed to put the booking through again and cancel the old booking. So Mr H says he agreed to pay for this new booking on that basis.

I don't have a copy of the call recording. But I find Mr H's testimony credible and find it implausible that he – knowing he had already booked once with the airline would have:

- spoken to an agent to confirm details and re-book if it had been clear that it was not in fact working on behalf of the airline and was in fact an independent travel agent;*
- failed to have mentioned on the phone that he already booked with the airline the day before;*
- agreed to book a duplicate ticket for the exact same flight for the same people (he and his partner) without some kind of assurance that his old booking would be cancelled.*

So I think it is more likely than not here that the agent told Mr H something or several things which turned out not to be true in order for him to agree to make a second payment for the exact same amount for the exact same booking. Such as:

- it was working on behalf of the airline and able to deal with queries related to his existing booking;*
- that in order to confirm the details of his booking it had to (and would) cancel the old booking and create a new one.*

So it appears here that Mr H was likely given false information by the agent about its role and also what was needed in order to confirm his booking. Had it not misled Mr H regarding this I don't consider it likely Mr H would have continued the conversation with it, let alone part with more money. I consider this means (for the purposes of Section 75) there has likely been a misrepresentation here by the agent in respect of its role and what was needed in order to confirm the details of his booking with the airline.

I also note that Mr H's emails to the agent soon after he discovers he has been charged twice back up his story that he was misled over the phone by it. Mr H seems surprised and shocked that he has ended up being charged twice for the same booking. He says that he never expected to pay for two trips and that he came to it simply to confirm the details for the booking he had made already.

I have also looked at whether the agent did actually provide a service to Mr H in any event. And I am not persuaded it has done. Mr H has maintained that the agent did not book any further tickets and simply reconfirmed the details of his existing booking (after he gave it the reference number). The evidence I have supports this. I note that the agent has forwarded on the information relating to the booking it says it confirmed for him— however, the e-ticket it has attached has the exact same 'R1' reference as the one that was emailed to Mr H directly by the airline (which was also noted as an online rather than phone booking). There is another reference number on the agent's cover invoice – but this appears to be its own reference number and doesn't show a new booking has been made. I also note that the ticket the agent indicates it reserved for Mr H has a section (when you scroll down) called 'Payment Information' which confirms the payment date as 16/8/22 – a day before Mr H says he spoke to the agent and a day before the 'Booking Date' the agent has listed on its cover invoice (and a day before it charged him a separate amount).

So it appears the agent had not actually made any new booking for Mr H and it simply forwarded on details of the booking he had already made the day before, charging him the exact same amount of money for that booking in the process. I know that it later says it cancelled the booking it made – but it has not provided any persuasive proof of this – such as confirmation from the airline directly. Mr H says he spoke to the airline and it told him only one booking (the one on the 16/8) was ever made – the original booking he ended up using. And in light of the evidence I have I find this more likely than not.

I don't see where the agent made it clear that it would be charging Mr H for simply confirming details of his booking or that it is contractually entitled to charge him what it has done here. Overall, it appears that it didn't really provide any services and appears to be in breach of contract.

This service looks at cases on the individual circumstances – and based on what I have discussed to this point I am persuaded that the agent has likely misrepresented the contract with Mr H and/or breached it in any event. However, I also note that wider evidence about

the agent points to Mr H's story not being an isolated case – in fact there appear to be notable amount of cases documented online with the same or similar allegations of the agent under its current and former name presenting itself as a particular airline customer service and giving misleading information on the phone and not doing what it says it will. This would not have been difficult for AESEL to have found out either if it had looked into the Section 75 claim. I think that while not fundamental to my decision – it is fair and reasonable for me to note these wider considerations when looking at what is most likely to have occurred in the individual circumstances here. I will ask the investigator to provide some of this information to AESEL.

Overall, I think that AESEL should have fairly considered Section 75 here, and looking at the evidence I consider it supports a likely misrepresentation and/or breach of contract by the agent. So I think it fairly should have upheld the claim.

I understand Mr H has received some money back from the agent to date. I understand this is £512 of the £1786.12 he paid it. With Section 75 in mind AESEL should fairly rework his credit card as if it had upheld a Section 75 claim for the remainder. If this results in a credit balance it should pay him 8% simple yearly interest on this from the date the credit balance arises to the date of settlement.

From what I can see AESEL closed and re-opened the claim several times and the dispute was considered from August 2022 for several months. In the circumstances (and for the purposes of my redress) the re-working should fairly be from 1 October 2022 – which appears to be when AESEL had sufficient information to investigate and give its answer on the Section 75 claim.

My provisional decision

I uphold this complaint and direct American Express Services Europe Limited (AESEL) to rework Mr H's credit card as if it had refunded him £1274.12 on 1 October 2022. If this results in a credit balance it should pay him 8% yearly simple interest from the date of said credit balance to the date of settlement.

I asked the parties for their responses.

Mr H agreed with my decision but AESEL did not respond.

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.

Neither party has given me reason to depart from my provisional decision. Therefore my final decision is the same, and for the reasons already given (as copied above).

In the interest of completeness, I note in making my decision that the investigator did not send AESEL links to what I had seen online about the supplier. However, AESEL has not raised this and as I have previously noted in my provisional findings – this background information is not fundamental to my overall findings in any event.

Putting things right

AESEL should now put things right in accordance with my direction below.

My final decision

I uphold this complaint and direct American Express Services Europe Limited (AESEL) to rework Mr H's credit card as if it had refunded him £1274.12 on 1 October 2022. If this results in a credit balance it should pay him 8% yearly simple interest from the date of said credit balance to the date of settlement.

If AESEL considers it is required to deduct tax from my interest award it should provide Mr H a certificate of tax deduction so he may claim a refund from HMRC, if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 29 September 2023.

Mark Lancod
Ombudsman