

The complaint

Mr B complains that American Express Services Europe Limited (AESEL) has unfairly declined to give him a refund in respect of a hotel booking made with the credit card he holds with it.

What happened

In January 2023 Mr B needed to book a hotel room for a business trip. It was the policy of Mr B's employer that for him to be reimbursed the cost of the accommodation he was required to book a room directly with the hotel and not via an agent.

Mr B says he knew the hotel chain and location he wanted and so he used a search engine to source the hotel and make the booking. Mr B says when he saw the first result of his search, he believed it was his chosen hotel chain's own website which allowed rooms to be reserved. He clicked on the link and made his selection and booked a room.

Mr B says it was only after having paid for the room that he discovered the booking had in fact been made via an agent. He tried to contact the agent to cancel the booking and obtain a refund. As Mr B was concerned this may not have been a legitimate booking, he said he also contacted the hotel directly and reserved a second room for himself. The hotel confirmed his original booking had been made.

Mr B requested a refund for his first booking from the merchant. This was declined. The merchant said they were a travel service provider and that they were a partner with the hotel chain. They said the room, under their terms and conditions that Mr B had agreed to at the time of booking, was non-refundable. The merchant also said they had tried to seek a waiver from that policy by seeking a refund from the hotel but this had been declined. They explained they had sent the funds for the room to the hotel at the time Mr B had paid.

Mr B made a claim for the cost of the hotel room to AESEL via chargeback which the merchant defended. Mr B said that the merchant had deliberately misled him into thinking their website was that of the hotel chain. He said there had been a misrepresentation. The merchant provided AESEL with the booking and their terms and conditions. AESEL didn't uphold his chargeback claim. Mr B disagreed with that decision, but AESEL said that he hadn't provided sufficient evidence for the chargeback to be re-disputed.

Mr B made a claim under section 75 of The Consumer Credit Act 1974 for the cost of the hotel room. AESEL explained that there are strict criteria which applies for this type of claim and there must be a clear link between the debtor/creditor/supplier relationship which didn't apply here as the merchant had paid the hotel for the room. AESEL also said that it didn't think that Mr B had shown there had been a misrepresentation by the merchant which had induced him into entering into the contract. Nor, it said, was there evidence of a breach of contract.

Mr B complained to AESEL about its decision not to reimburse him the cost of the hotel room. It partially upheld his complaint in that AESEL said Mr B had been given some misinformation during his claim about the timescales that applied. As a gesture of goodwill, it

offered him £50.

Mr B was unhappy at AESEL's decision and complained to this service. He said he thought the merchant had been fraudulent in the way it had set out its website and they had misrepresented themselves as the hotel chain. He provided screenshots of the website in support of his complaint.

Our investigator didn't recommend Mr B's complaint should be upheld. He said although he appreciated Mr B's frustration as to what had happened, he thought Mr B had made a genuine error that he was dealing directly with the hotel rather than a booking agent. Our investigator said looking at the snapshots he thought it was clear it wasn't the hotel chain's own website and said he didn't think there was evidence of a misrepresentation or a breach of contract.

Our investigator said AESEL had acted fairly in the way it had considered both Mr B's chargeback and section 75 claims. He said he thought the offer of £50 compensation for the mis-advice was reasonable.

Mr B has strongly disagreed with our investigator's view. He says the merchant isn't a legitimate company and he denies he made any mistake. Mr B said the merchant's website was set up to deceive.

As the parties were unable to reach an agreement the complaint has been passed to me.

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.

While I appreciate Mr B's strength of feeling about what happened here, I'm afraid I am going to disappoint him with my decision. I will explain why below.

The issue for me to consider is whether AESEL has handled Mr B's claim for reimbursement of the cost of the hotel room fairly. Mr B first raised a chargeback, which is a process that involves the card issuer disputing payments made on the card through a dispute resolution scheme operated by the companies which run the card networks, here that's American Express. It allows customers to ask for a transaction to be reversed if there's a problem with the goods or services they've paid for. There's no automatic right to a chargeback and it isn't a guaranteed method of getting a refund.

The merchant disputed that there should be a chargeback as they said the room had been booked and Mr B had agreed to their terms and conditions when making that booking which included that the cost of the room was non-refundable. They provided documentation to AESEL. AESEL had then considered what both parties said and didn't reimburse Mr B the cost of the room.

AESEL said there wasn't evidence that the merchant had misrepresented themselves and induced Mr B to enter into the contract for the room. I've seen Mr B has supplied screenshots to support his view that the merchant had set up their website to mislead customers. However, looking at the first screenshot which is the results of the search engine's search for the hotel chain and location, I can see the merchant's website is listed first and beside it states "Report Ad" marker which indicates this is an advert. The website also doesn't include the hotel chain in its name.

The screenshot of the actual website when opened shows there is a banner across the

top which states this is “*An independent travel network*”. And while the website has pictures and information about the hotel, I disagree that the merchant’s website is purporting to actually be the hotel chain. The booking page for the hotel wasn’t in the hotel chain’s livery colour but a different colour used by the merchant to actual book the accommodation.

In order to find that a misrepresentation has occurred, there must be enough evidence that a false statement of fact has been made *and* that it was this false statement which induced the consumer to enter into the agreement. I can’t reasonably say that the merchant misrepresented that it was the hotel chain to Mr B. The website address, although referring to ‘*reservations*’ doesn’t state the hotel chain as part of that address and once in the website itself it informs the customer that it is an independent agency.

Although Mr B has queried the legitimacy of the merchant, I’ve seen that they did perform their agreement with him by booking the room as he requested at the hotel of his choice and passing the funds on to that hotel for that booking. While I appreciate booking this room was more expensive than the room Mr B later purchased directly with the hotel, that wouldn’t amount to a breach of contract as a travel agent isn’t obliged to offer a room at either a cheaper or same rate as the hotel would. So, I don’t think AESEL acted unfairly by deciding, after it had considered both parties’ evidence, that there wasn’t enough to uphold Mr B’s chargeback claim.

In respect of Mr B’s section 75 claim, as AESEL explained to him, for such a claim to be considered certain criteria must be met. And as this was a booking through a third party then the necessary chain between the debtor/creditor/supplier didn’t exist. I therefore think AESEL handled this claim fairly, save that Mr B was given some misinformation about time scales for which £50 compensation was then offered. Since this misinformation didn’t impact on the decisions about Mr B’s chargeback and section 75 claims then I think that amount is fair and reasonable in the circumstances and I wouldn’t ask AESEL to do more.

I appreciate Mr B feels strongly that this wasn’t his error, but I think on the evidence that I have seen that he made an assumption he was dealing directly with the hotel rather than a travel agent and that this was his error.

So, for the reasons set out above I’m not upholding Mr B’s complaint.

My final decision

For the reasons given above, I’m not upholding Mr B’s complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 15 February 2024.

Jocelyn Griffith
Ombudsman