

## **The complaint**

Mr B is unhappy about the time taken by American Express Services Europe Limited ("AESEL") to consider a claim he made for flights paid on his credit card.

## **What happened**

Mr B purchased flights for around £200, through a company I'll refer to as "S" using his AESEL credit card in January 2020. He was due to take the flights in April 2020.

However, Mr B's flights were cancelled by S and it offered him a future travel voucher. Mr B didn't accept this and explained he wanted a refund for the cost of the flights, as the friend he was due to visit, no longer lived in the country he was intending to travel to. He complained to S and said he was entitled to a full refund due to the European Commission guidance on refunds due to Covid-19.

Mr B complained to AESEL in April 2020. In May 2020, he made a further complaint to AESEL as it hadn't provided him with an outcome to his claim.

AESEL issued its response to Mr B's complaint in May 2020. It didn't uphold Mr B's complaint and said that there wasn't a timeframe in which it was required to respond to a claim made under section 75 of the Consumer Credit Act 1974 ("s75"). It also said that as a result of the Covid-19 pandemic, its UK offices were closed and it was adapting its existing processes. It also said it couldn't comment on the outcome of a third party claim.

Unhappy with this, Mr B referred his complaint to this service. He said AESEL should refund him for the cost of the flights. Since referring the complaint to this service, Mr B has confirmed that he received a full refund of the cost of the flights in July 2021 from the flight provider.

In March 2022, our investigator looked into the complaint and upheld it. He said AESEL should have considered raising a chargeback, which he thought would have had a reasonable prospect of succeeding. He also said whilst AESEL thought Mr B's claim didn't meet the requirements for a valid claim under s75, he thought it did. He said because AESEL didn't raise a chargeback when it should have, AESEL delayed Mr B from receiving a refund. He recommended that AESEL should pay Mr B £100 compensation.

AESEL disagreed. It said it raised a s75 claim rather than a chargeback claim, because Mr B instructed it to. And it said because the flight supplier had provided an alternative remedy, it frustrated the chargeback. AESEL said Mr B didn't explain that he'd had any financial loss as a result of the delay in receiving a refund and felt it had taken appropriate action in assessing Mr B's s75 claim.

Our investigator responded and said it would have been good practice for AESEL to attempt a chargeback for Mr B. He also said the terms and conditions of the flight provider from around the time the sale was carried out, stated a customer could choose how to receive a refund where a flight was cancelled. And so, he said a chargeback would likely have been successful.

AESEL disagreed and said Mr B had booked a non-refundable flight and so he would have likely been told a chargeback wouldn't have been successful if it had been raised. It also said chargeback is a voluntary scheme which wouldn't take precedence over a merchant's terms of booking.

As AESEL remains unhappy, the complaint has been passed to me to decide.

### **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.

To make it clear, this complaint is about AESEL, as Mr B's credit card account provider. It's not about the flight provider or S, who aren't financial service providers and so don't fall within the remit of the Financial Ombudsman Service.

Generally, where a consumer raises a dispute about a transaction made on a credit card, the card provider can consider the dispute in two ways – chargeback and s75.

In this case, AESEL didn't attempt a chargeback and instead considered Mr B's claim under s75. Mr B has also since received a refund from the flight supplier directly. So I've considered whether AESEL should have raised a chargeback when Mr B complained to it. And if it should have, what, if anything, it should do to put things right.

A card issuer can attempt a chargeback in certain circumstances when a cardholder has a dispute with a merchant – for example when goods or services aren't provided. It isn't a legal right and there's no guarantee the card provider will be able to recover the money this way. The chargeback process is subject to the rules of the scheme and strict criteria apply.

AESEL say Mr B never instructed it to raise a chargeback, which is why it didn't consider raising one. It also said even if it did raise a chargeback, Mr B's flight was non-refundable and so it would likely have been unsuccessful. However, it's generally considered good practice for a card issuer to raise a chargeback, if there is a reasonable prospect of a chargeback succeeding.

In this case, Mr B didn't receive the flights he was due to receive, but this was through no fault of his own. The flights were cancelled by S, because of the Covid-19 pandemic. AESEL has said the flight was non-refundable. But the terms and conditions AESEL are referring to don't cover cancellation by S. So, I've reviewed what S's terms and conditions say about cancellation by it.

Having done so, the terms and conditions say that in these circumstances, within seven days, S's customer will be offered a choice between cash, bank transfer, bank cheque or travel vouchers/other services with written consent. However, Mr B was only offered travel vouchers and these were offered without his written consent. So I think if AESEL had raised a chargeback at the time, it would have likely succeeded given S didn't appear to obtain Mr B's consent to provide him with travel vouchers and because S didn't appear to provide Mr B with any options of how he'd like to be reimbursed. I also think it's unlikely S offered any options to Mr B, given he's provided supporting information to show he contacted it to ask for a refund instead of a travel voucher.

In light of this, I think AESEL should have attempted to raise a chargeback on behalf of Mr B when he initially contacted. If it had done, I think the chargeback would have had a reasonable prospect of success. This would have likely meant that Mr B would have been provided with a permanent refund a lot sooner than he eventually was. And because I think AESEL should have attempted to raise a chargeback, which I think would have a likely prospect of succeeding, I haven't considered whether it was fair for AESEL to decline Mr B's claim considering s75.

I've gone on to consider the impact of this to Mr B. Mr B was provided with a refund from S directly in July 2021. This was around 15 months after he made a complaint to AESEL about the transaction. I think it's unreasonable that Mr B had to wait this long to obtain a refund, given I think there was a reasonable prospect of Mr B's chargeback claim succeeding had AESEL raised one. I also think this caused Mr B some distress and inconvenience as he had to continue to pursue his complaint with S, until he received a refund in July 2021. So I think

AESEL should pay Mr B £100 to recognise the delay and the distress and inconvenience caused to Mr B.

**My final decision**

I uphold Mr B's complaint and I direct American Express Services Europe Limited to pay Mr B £100 for the distress and inconvenience caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 7 December 2022.

Sonia Ahmed  
**Ombudsman**