

The complaint

Mr R complains about the way American Express Services Europe Limited (AESEL) has dealt with claims he brought to it relating to flight bookings he'd made using his credit card.

What happened

The background to this complaint was set out in some detail by our investigator in his initial assessment. For reasons of brevity and in the interests of avoiding identifying features, I'll simply summarise events here.

Mr R made a series of travel bookings using his American Express credit card. Unfortunately his travel plans were affected by the Covid-19 pandemic. He received travel vouchers in lieu of a refund, which were valid for 12 months. Mr R made replacement bookings using a combination of the vouchers and further part-payment with his credit card.

The replacement bookings were cancelled for similar reasons, and Mr R received more vouchers, though not to the full value of the amounts he'd paid. He made further future bookings, but once again these were cancelled, with more vouchers issued.

Mr R did eventually get to travel on a subsequent booking, which he paid for using some of the vouchers and a small amount by card. Perhaps unsurprisingly, Mr R felt the amounts he'd paid didn't tally with the flights that did take place, or the refunds and sums he'd received as vouchers. He asked American Express to look into things and see if that would enable him to recover the money by which he was out of pocket.

There was some back and forth between American Express and Mr R in efforts to establish the correct amount he should receive. The parties weren't able to agree on this, and ultimately Mr R asked us to consider the dispute.

Our investigator examined the evidence in relation to all of Mr R's bookings, the amounts he'd paid by card and by voucher, and whether he considered American Express had had proper regard for its potential liability to Mr R both via chargeback and the connected lender liability provisions in the Consumer Credit Act 1974. He concluded that it was likely American Express was liable to Mr R, though not to the full value of the vouchers, as these included an additional sum above the amount that was the subject of the cancelled contracts.

The investigator's calculations produced an overall total of £2,464.81, which was £944.69 more than American Express had proposed. He recommended American Express pay this sum to Mr R to resolve the dispute.

Mr R indicated he was willing to accept the investigator's recommendation. American Express hasn't sought to challenge the findings in respect of its liability to Mr R. But it has said it has been unable to establish that the vouchers are invalid. American Express has expressed concerns over the possibility that agreeing to the settlement might result in Mr R obtaining double recovery. It maintains its own calculations are a fair sum in settlement.

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 should say, first of all, that I have every sympathy for Mr R and the unfortunate circumstances in which his travel plans appear to have been so frequently disrupted. It doesn't appear to be in dispute that these disruptions gave rise to a liability on American Express's part to refund Mr R. The issue at hand is the amount of that liability; that is, what's the appropriate sum American Express should pay Mr R to address his loss?

I'm also sympathetic to American Express in this respect. The chain of payments, vouchers, refunds and rebookings is quite involved, and was further complicated by the merchant applying an additional amount on top of the value of certain of the vouchers. I've no doubt American Express has made extensive efforts to work out the correct amount. I'm also conscious Mr R has taken the time to produce his own calculations via a spreadsheet. It's not my intention to suggest either party is at fault for the failure to reach an agreed sum as settlement.

Rather, I've focused on what I consider to be the fair way to resolve matters, having regard for all of the evidence available to me. That suggests to me that our investigator's proposal, based on the total amount Mr R has paid on his card, less the vouchers he has been able to use, represents a reasonable working resolution.

I've considered the reasons American Express gave in response to that proposal, and I understand its concerns. I'm sure Mr R would readily acknowledge he wouldn't expect to recover money while also benefitting from having the use of vouchers representing those same funds.

That said, I've seen nothing to suggest that Mr R has been able to use the remaining vouchers, or that there is a significant risk that he will do so. After all, one of the key points Mr R has made – and of which he has provided us with supporting evidence that we've shared with American Express – is that he's been unable to use the vouchers, prompting his request that they be refunded.

As this appears to be the main barrier to resolution along the lines suggested, I think it's appropriate to make provision to address the risk – however unlikely – that gives American Express cause for concern. I'm satisfied this will then enable the parties to reach a fair settlement to the dispute.

My final decision

My final decision is that in settlement of Mr R's complaint, American Express Services Europe Limited (AESEL) should, within 28 days of receiving his acceptance of this decision, take the following steps:

1. pay Mr R £1,520.12 to reflect amounts paid for his cancelled flight bookings, as it has previously offered to do
2. pay Mr R £944.69 in respect of the vouchers issued to him in August 2021 and due to expire in August 2022 that he has been unable to use and which appear to be invalid.

In addition to this, American Express is entitled to deduct from the amount in 2. any sums in relation to these specific vouchers it can show Mr R has been able to use. If Mr R has not

used these vouchers but does so at some point in the future, he undertakes to inform American Express of this and to repay any such amounts to it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or reject my decision before 12 April 2023.

Niall Taylor
Ombudsman