

## The complaint

Mr D is unhappy with the outcome of a claim he made to American Express Services Europe Limited (AESEL) in respect of flights purchased using his credit card.

## What happened

In summary, Mr D bought flights with an airline ('the supplier') which were cancelled because of the global pandemic. Mr D paid for the flights with his AESEL credit card and also used a significant amount of his airline loyalty points.

Mr D was unable to get a refund from the airline for the tickets so he made a claim with AESEL who raised chargebacks for Mr D and recovered the amount paid for the flights on the card. However, AESEL did not refund Mr D for the loyalty points he used towards the booking. Mr D says these points are worth £600 and he should get this value back.

AESEL looked into the matter under Section 75 of the Consumer Credit Act 1974 ('Section 75') but refused to refund him. However, it says that it paid him £75 as compensation for initially telling him that he would get this money back.

In summary, AESEL says he shouldn't get back the £600 he wants because:

- the purchase receipt shows the £600 for using the points as a 'saving' rather than part of the total cost of the flights;
- the flight contract was for £2,915 which was the same amount paid using the AESEL card (not £3,515);
- the loyalty point scheme is governed by a separate contract with a separate legal entity to the supplier not financed by the AESEL card – if Mr D has not received a refund of the points his dispute is with it rather the supplier (and AESEL has no Section 75 liability in respect of this);
- the terms of the operator of the loyalty scheme excludes liability for the loss of the points; and
- the fare is non-refundable – and the terms of the loyalty scheme make it clear that the points are only refundable where the fare is refundable.

AESEL also initially pointed out that Mr D had accepted a voucher for the cancelled flights – and by getting the money back via chargeback he had recovered his money twice.

I issued a provisional decision on this case. 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.*

*Mr D has received a refund of what he paid on his card through chargeback so I don't consider it necessary to discuss chargeback or that amount here. The central issue is the*

£600 Mr D wants for the loss of loyalty points and whether AESEL was right in refusing his Section 75 claim for this.

## Section 75

Section 75 in certain circumstances will allow Mr D to make a claim against AESEL for any breach of contract or misrepresentation by a supplier of goods and services paid for using the credit card. However, certain technical criteria apply as to whether a Section 75 claim is valid. In this case I consider the technical criteria is met in order to allow Mr D to make a Section 75 claim in respect of the actions of the supplier here.

I don't appear to have been sent a copy of the terms and conditions of the supplier relating to Mr D's booking. So I have looked online at archived terms which I understand to likely be the terms and conditions which relate to Mr D's original ticket booking. I think it fair I consider these as the terms that relate to Mr D's booking while I also note the relevant provisions here look to be broadly the same as more recently published versions in any event. From what I can see the terms say in the event of cancellation by the supplier one of the options for the customer is a cash refund.

Although there are some chat transcripts showing that Mr D made some initial enquiries about cancelling his flight – from what I can see the flight was actually cancelled by the supplier in the end. I can't see that any particular contractual term was cited as a reason for cancellation. It appears to have been a decision taken due to the global pandemic.

I can also see Mr D received an email from the supplier confirming the flight was cancelled and that a refund was one of the options available. So all things considered I am satisfied that a refund was a remedy available to Mr D here. And for the sake of completeness having considered the terms and conditions I think Mr D as the lead booker and paying party is entitled to claim this refund for the cost of flights booked for the rest of his party.

I note the same email from the supplier also said that if Mr D had accepted a voucher then he was no longer eligible for a refund. What appears to have happened is that the supplier has subsequently refused to issue Mr D with a refund as it claims he requested and was sent a credit voucher already. AESEL has mentioned this point and intimated that as Mr D has accepted a voucher and got a refund via chargeback he has had his money back twice.

Mr D strenuously denies that he ever requested or accepted a voucher. And based on what I have seen (including his previous communication with the supplier where he clearly doesn't want a voucher) I don't see persuasive evidence that he did request the voucher option.

It might be that the supplier sent him one – but that doesn't mean he did choose this as a resolution as opposed to a refund. I don't have sight of the communication Mr D received setting out all his options on cancellation of the flight, or the online portal he accessed. However, I note there have been media reports about the system the airline was using issuing vouchers automatically which would plausibly explain why he might have been sent a voucher. I will ask the investigator to send this information with my decision.

So while I agree that it would not be fair for Mr D to benefit from a voucher and a cash refund (I deal with this later) I am not persuaded he did request or accept a voucher. It follows that as I am not persuaded there was a valid voucher agreement in place Mr D was still entitled to the refund option as set out in the contract. As the supplier did not issue him a refund of his fare in accordance with its contractual obligation I have considered what would be a suitable remedy for this breach.

*I have looked at terms of the separate loyalty scheme which appear to have been in place when Mr D booked (and appear to reflect those extracts which AESEL has sent over). I note these state that the points used in part payment will be refundable where the fare itself is refundable. I know that AESEL has referred to the fact that some non-refundable restrictions apply to the ticket class. But those restrictions appear to apply in the event of Mr D cancelling. In this case the fare was refundable because the supplier cancelled the flight.*

*Considering the terms of the loyalty scheme I think had the supplier issued the refund of the fare to Mr D as he was entitled, then he would also have got his loyalty points back. However, because the supplier did not permit him to get a refund of his fare (as it should have done) Mr D is in a position where he can't get his points back either.*

*The ideal remedy here is to give Mr D his points back – as it is a valid consequential loss which Mr D has suffered as a result of the supplier's actions.*

*However, AESEL does not have the power to award loyalty points. So this is not a practical remedy. Therefore, I think it fair to consider an appropriate cash damages award.*

*I note that AESEL has intimated that the points do not have a cash value. However, I consider they are an earned reward with a long expiry which Mr D (had he got them back) would have had likely use of to obtain discounts on future bookings. And once used on a flight they represent the cash value of any saving achieved. So I think these would have been of value to Mr D had he received them back and represent a tangible loss.*

*In this case the receipt for Mr D's booking is clear that the use of the points represents a £600 saving on the ticket price. I don't think it is relevant here how the total price of the ticket was expressed on the receipt as AESEL has indicated. What is important to me is a way I can fairly determine the likely consequential loss Mr D has suffered as a result of the supplier's actions. And in this case (and in the absence of practically refunding the points) I consider £600 to be fair assessment of said consequential loss.*

*AESEL has made some other points about the loyalty scheme being run by a separate legal entity but I don't consider that relevant here. I am not considering AESEL's liability for any breach or misrepresentation by the loyalty scheme operator. This is about AESEL's liability for the actions of the supplier paid using its card – which will include reasonable consequential losses flowing from its actions such as those under discussion here.*

*I also note AESEL has referred to a general disclaimer made by the loyalty scheme. But I don't think that this applies here and I note that it relates to circumstances not under review (such as alteration, termination of the programme or the right to earn or redeem points).*

*So all things considered and with its obligations under Section 75 in mind I consider it fair and reasonable that AESEL pay Mr D £600 which it should have fairly awarded him as part of his original claim.*

*I don't think Mr D should get an additional interest award on the £600 refund here. Because had he got the points back these would not have attracted interest in any event. I also think it fair that if Mr D accepts this resolution (and to calm any fears around double recovery) it is reasonable that AESEL contact the supplier to request it cancel any credit voucher that it issued in relation to the booking due to the fact Mr D has now recovered his costs elsewhere. However, I don't think it fair that Mr D be put to any further trouble in attempting to cancel the voucher he appears not to have wanted or requested. Nor do I think it fair that a refusal or inability to void the voucher by the supplier mean that Mr D does not get the*

*£600 payment (I also note that Mr D has said he has no intention of using the voucher anyway and I have no reason to doubt that).*

*I understand that AESEL has already paid Mr D £75 for the misleading information it gave him about the refund for the loyalty points. I think this is fair compensation for this issue in light of my overall findings here.*

### **My provisional decision**

*I uphold this complaint and direct American Express Services Europe Limited to pay Mr D £600.*

I asked the parties for their comments on the provisional decision.

AESEL did not respond. Mr D responded to indicate he was happy with the provisional findings. He said he was not sure of AESEL ever paid him the £75 compensation and he would hope they are made to pay more than this considering 'the hassle' they have caused him and this service.

### **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.

Mr D has mentioned compensation. AESEL has not clarified if it paid him the £75 already. But if it has not done so and Mr D accepts my decision then it needs to as part of my directions here.

As an aside Mr D has indicated more compensation should be payable due to the overall inconvenience of having to bring a complaint to this service – but this isn't something in itself I would usually award compensation for. I also wouldn't be awarding compensation for inconvenience caused to this service as Mr D has suggested. Overall, I think the £75 compensation offered is right for the bit of misinformation Mr D received. It didn't change things – ultimately AESEL were not willing to refund him in any event – but I recognise it did cause a degree of annoyance to have his hopes temporarily raised like that.

In summary, neither party has added anything that makes me think I should change my key findings as set out in my provisional decision (incorporated above). I still think these findings are fair and reasonable in the circumstances.

### **Putting things right**

For the reasons outlined here (and incorporating my provisional decision) AESEL should pay Mr D £600. It should also pay him £75 compensation if it has not already done so.

### **My final decision**

I uphold this complaint and direct American Express Services Europe Limited to pay Mr D £600. It should also pay him the £75 compensation if it has not already done so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr D to accept or reject my decision before 14 January 2023.

Mark Lancod

**Ombudsman**