

## **The complaint**

Mr I complains that American Express Services Europe Limited ("AESEL") treated him unfairly when he asked it to help him obtain a full refund for a holiday he was unhappy about.

## **What happened**

Mr I booked a package holiday with a third party travel agent I will refer to as "S". The package holiday consisted of flights, and an all-inclusive stay in a hotel and car parking. The bulk of the cost of the holiday was for the flights.

Mr I booked the holiday for 9 people including himself. The holiday party consisted of members of Mr I's immediate and extended family. Mr I was the lead booker. Mr I used his AESEL credit card to book the holiday.

Mr I and his family went on the holiday and used all the flights, the hotel accommodation and facilities and the car parking. However, from Mr I's perspective and that of his family it was not a successful holiday. In particular, Mr I was dissatisfied with several aspects of the standard of the service provided by the hotel. Also he was upset because he did not think that the hotel was a five star hotel although he'd booked it believing it was. Moreover, after he booked the holiday, Mr I was told his flights were no longer leaving from the original airport and he had to accept flights from a different airport. As a result of all the things that had gone wrong from his point of view. Mr I had run up costs for food and for baggage charges he wanted these costs back too. Mr I had found the holiday stressful, and he wanted to be compensated for this as well. For all of these reasons Mr I complained to AESEL.

Initially AESEL declined to uphold Mr I's complaint as S had already refunded the total amount Mr I had paid for the flights and hotel under a process known as chargeback. In AESEL's opinion no further refund was justified. But later it appears that the refund was reversed in part, and Mr I was charged again for the flights. It appears this was because S changed its mind and did not agree that Mr I was entitled to a refund for the flights. However, AESEL considered it had no proper basis to take matters any further in the light of what S had told it.

Mr I indicated he was unhappy about all of this. He continued to want a full refund. Moreover, in his opinion AESEL had not explained what was happening with the chargeback. For example, from his point of view, refunds appeared out of the blue and then were reversed in part without warning or proper explanation. Mr I also indicated that AESEL did not have a joined up approach and as a result he ended up explaining the same things to it time and again. Further, all of this was happening when Mr I was experiencing a period of extended ill-health and dealing with AESEL only added to his stress.

Mr I remained dissatisfied, so he complained to our service.

One of our investigators looked into Mr I's complaint. It seemed to our investigator that Mr I's complaint was about the standard of the hotel. Mr I had already received a full refund for this portion of his holiday. Therefore Mr I had received an appropriate remedy for this part of his complaint. It followed our investigator did not recommend any further refund.

That said, our investigator was persuaded that AESEL did not handle the chargeback as well as it should have done, in that the information AESEL provided throughout was unclear and

sporadic. Our investigator was satisfied that this likely caused Mr I avoidable distress and inconvenience, he thought that £200 was an appropriate award for this.

AESEL accepted our investigator's recommendation. However, it blamed Mr I for the service he'd received from it saying he'd raised the same chargeback on six separate occasions. Specifically it told us,

*"For the record, the reason there were multiple chargeback adjustments that became confusing was because the card member kept calling up and requesting separate chargebacks."*

Mr I rejected our investigator's recommendation. In summary, Mr I repeated his earlier stance. He also objected to the recommendation on the basis that the flights were no good to him given that the hotel had been below the level he'd been entitled to expect. Mr I also mentioned his loss of enjoyment. Moreover, Mr I did not agree £200 was enough to make up for how AESEL had behaved.

Later Mr I wrote to us again raising new points, which I've summarised below:

- He told us that he'd expected to receive premium flights instead he and his party had to travel by budget airline.
- The seating they had on the flights did not meet their needs because they were scattered throughout the plane. This caused both Mr I and his wife (who had been one of the 9 travelling with Mr I) stress and loss of enjoyment.
- He had to pay for extras on the flights whereas in his opinion these extras should have been part and parcel of the ticket price. For example, he expected to be served a meal on the flight. Instead, there were only snacks which had to be paid for. This left his family hungry and upset and this added to the stress he and his wife experienced.
- Mr I repeated that the hotel was substandard in his opinion. And he commented negatively, again, on the performance of AESEL.
- Mr I pointed out the purpose of the holiday had been to help him relax but it had had the opposite impact, indeed, according to him it caused him personal injury. Moreover, he has disabilities, and he believes that he has been discriminated against on the basis of these disabilities.

Mr I asked that an ombudsman review his complaint.

### **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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Mr I has now also expressed dissatisfaction with the of the quality of the flights and raised the issues of personal injury and discrimination. These appear to be a new matters. These matters have therefore not been considered by AESEL in its final response to Mr I or

investigated within this complaint. It follows that I am unable to look at these new matters in this decision.

Mr I talks about the distress and inconvenience experienced by his wife in relation to the new matters. But only Mr I has the standing to bring this complaint. That means I have no power to make an award for any distress or inconvenience experienced by his wife, even if I could look at these new matters, which I cannot.

AESEL had two potential routes it could have used to get Mr I a refund. These routes were a claim under a process known as chargeback and a claim against itself under the Consumer Credit Act 1974 and specifically under Section 75 of that act. I'll look at each of these in turn.

In considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

As Mr I paid for the package holiday using his credit card and wanted a refund, I've thought about whether AESEL dealt with his request fairly. The chargeback process is relevant in this case.

Chargeback is a way in which payment settlement disputes are resolved between card issuers and merchants. They are dealt with under the relevant card scheme rules.

In certain circumstances the process provides a way for AESEL to ask for a payment Mr I made to be refunded. Those circumstances include where services aren't as described/misrepresented by the company Mr I paid.

There is no guarantee that a chargeback will succeed, and it can be opposed or defended by the financial institution which received the card payment (it will represent the merchant), who may not agree that the chargeback is valid.

That said, I would expect a credit card provider, approached by a customer looking to dispute a card payment for services, to consider whether it had valid grounds for raising a chargeback, and to do so if it would appear that a chargeback would both be compliant with the card scheme rules and have reasonable prospects of succeeding. As part of its approach I'd also expect the credit card provider to select the right chargeback reason code and to explain the process to its customer throughout.

Therefore it follows that if I am to order AESEL to refund all or part of the cost of the holiday, I must be satisfied that it acted incorrectly in the way it made a chargeback claim under the chargeback regulations. I've looked at what AESEL did, and the relevant regulations and I think AESEL acted correctly in not going any further than it did with the chargeback. I'll explain why I say this below.

It appears AESEL did start the chargeback process and it appears that S defended the chargeback in part. The mere fact that the chargeback was defended in part does not mean AESEL had to go no further. But here the only reason for the chargeback was in relation to the hotel. Mr I was refunded in full for this. It appears that S conceded this and that is why Mr I got this refund (although this point is not clear from the information AESEL has provided). Therefore on the face of it there was nothing further to compensate Mr I for.

Further, it does not appear (according to S at least) that Mr I complained directly to S at the time, that is either when he was on holiday or when he returned. This could have prevented Mr I from recovering anything at all under the chargeback rules. So on that basis the fact that Mr I got any refund at all via this route was a better result than could have reasonably been expected.

In addition, Mr I and his party used the flights and the car parking and there was no suggestion at this point that these services were not as described. So it appears that there was no chargeback reason that applied to these services and no route therefore using chargeback to get a refund for these costs.

For all of these reasons I don't agree that AESEL treated Mr I unfairly by not trying to continue with the chargeback to get him the full refund he wanted.

As I've already mentioned Mr I might have had a claim against AESEL under Section 75.

The general effect of Section 75 is that if Mr I has a claim for misrepresentation or breach of contract against the supplier he can also bring a like claim against AESEL provided certain conditions are met.

It is not entirely clear if those conditions are met in this instance. But I don't need to go into this point further because even if I did think those conditions were met I'd still not uphold this part of the complaint. I say this because even if I was satisfied that there had been breaches of contract and/or misrepresentation I'd not award Mr I anything more than he has already received. There is no dispute that Mr I has been refunded already for what he paid for the hotel. Mr I and his party did use the hotel. Yet despite this full use he has had a full refund. In other words Mr I has effectively paid nothing for the hotel stay which goes over and above what I think he is fairly and reasonably entitled to expect. If I had upheld this part of Mr I's complaint I would only have awarded a partial refund of the hotel costs. I do find it likely that Mr I had loss of enjoyment, but I think that the refund he has got compensates him for this too.

I'm aware Mr I is asking for a full refund, i.e. he wants back the money he paid not just for the hotels but for the flights, food, baggage and car parking too, but I don't agree that's fair and reasonable as I have already said. I cannot see that it would be right to say that a full refund should be made - that would wrongly imply that no service at all had been received. Moreover, the food and the baggage costs did not flow from anything that AESEL or S did wrong. So that is another reason why I can't fairly order AESEL to refund these costs.

For completeness I'll add Mr I agreed to the change of airport. Therefore I don't think that there is any misrepresentation or breach of contract in relation to this complaint point in any event.

For all of these reasons I've no proper basis to say AESEL must give Mr I the full refund he asks it for.

That said, I can well understand why Mr I was dissatisfied with what AESEL told him about how it was dealing with the chargeback. The information it provided was confusing and the explanations were scarce. I don't think it is appropriate for AESEL to point to Mr I and suggest he caused the confusion. It was open to AESEL to tell Mr I it would not start six separate chargeback claims for the same matter it did not. This then led to the muddle that ensued that's down to AESEL. I think it likely this did cause Mr I to experience distress and inconvenience and that it is fair and reasonable that I should make an award for this.

I recognise Mr I does not think £200 is enough. But in the circumstances I consider that £200 is fair and reasonable. I do not therefore consider that it would be correct for me to require AESEL to pay Mr I any more than it has already agreed to do.

### **My final decision**

My final decision is that American Express Services Europe Limited must pay Mr I £200 for distress and inconvenience as it has already agreed to do.

American Express Services Europe Limited must pay the £200 within 28 days of the date on which we tell it Mr I accepts my final decision. If it pays later than this it must also pay interest on the £200 from the date of my final decision to the date of payment at 8% a year simple.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mr I can reclaim the tax if he is able to.

Mr I should refer back to American Express Services Europe Limited if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr I to accept or reject my decision before 21 November 2023.

Joyce Gordon  
**Ombudsman**