

The complaint

Miss O has complained about how American Express Services Europe Limited (AESEL) responded to a claim for money back in relation to a purchase she'd made on her credit card.

What happened

The circumstances of the complaint are well known so I'm not going to go over everything again in detail. But, to summarise, on 13 April 2023 Miss O bought flight tickets from a merchant I'll call "B". She paid £684.28 using her AESEL credit card. The first outbound flight was scheduled to depart a few days later, on 17 April 2023. Later on the 13th, Miss O decided to change her flight date and rebook because her plans had changed. She called up B and said it told her she'd be allowed to do that if she paid the fare difference. She said B told her it would be better to do it online herself because she might be able to find a better deal. She said she decided to rebook her flight on 15 April 2023 to depart later in the year and paid an additional £464.60 for the fare difference using her AESEL credit card. She said the money wasn't taken by B and it was held as pending on her account.

On 17 April 2023 Miss O says she received an email from B saying her flights had been cancelled because she didn't show for the flight. She says she immediately got in contact with B via webchat and explained she'd paid to rebook her flight. B said it was yet to receive payment from her for the changes. Miss O was unhappy and worried she was going to lose over £1,000 across the two payments and she contacted AESEL to put in a claim. She said B didn't respond to her.

AESEL contacted B about the initial payment through chargeback, but B didn't accept it because the fare type Miss O bought was non-refundable. It looks like it never took the second payment from Miss O and said she was a no show for the flight she'd originally booked. AESEL didn't uphold the claim or refund Miss O. She referred her complaint to our service to consider.

Our investigator looked into things but didn't uphold the complaint. He said AESEL raised the chargeback for the initial transaction, but it was defended on the basis of the original ticket being available and non-refundable. He didn't think AESEL could have taken it further. He also said he didn't think there'd have been grounds for a successful claim under section 75 of the Consumer Credit Act 1974 because there was no breach of contract or misrepresentation. Our investigator noted Miss O had tried to make a payment to change the date of the ticket, but this didn't go through, and she didn't receive confirmation of the new booking. He said she may wish to contact B to raise a complaint for not taking the 2nd payment.

Miss O didn't agree. She said she shouldn't be out of pocket when she made changes to her flight. She said she wasn't at fault. As things weren't resolved, 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.

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Miss O and AESEL that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I also want to say I'm very sorry to hear about the problems Miss O had with the trip. I appreciate it cost a significant sum, and I can't imagine how she must've felt. I'm also conscious she thinks her complaint hasn't been properly understood. And I can understand why. But for completeness I need to cover off a few things first.

What I first need to consider is whether AESEL – as a provider of financial services – has acted fairly and reasonably in the way it handled Miss O's request for getting money back. It's important to note AESEL isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, AESEL can consider assessing a claim under section 75 or raising a chargeback.

The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back.

While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim.

AESEL was only able to attempt to chargeback the payment that debited Miss O's account. This was defended by B because the flights relating to that payment weren't refundable, and Miss O didn't show for the flight. While I appreciate that's not what Miss O's complaint is really about, I don't think it was wrong of AESEL to raise the chargeback in the first place. But I don't think there were grounds to pursue it further because the flight that the first payment was originally intended for wasn't refundable. At the point the chargeback was raised the second payment hadn't left Miss O's account, and there was no sort of confirmation she could supply that the initial payment had funded the rebooked flights later in 2023. This is where the problem has arisen.

Section 75 is a statutory protection that enables Miss O to make a like claim against AESEL for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with her for the provision of goods or services. But for similar reasons to what I've said above – the transaction the initial payment funded was for the first set of flights. Those flights were available and non-refundable, and the rebooking hadn't gone through. Without the second payment having gone through, I don't think there was a breach of contract or misrepresentation that AESEL was liable for.

However, I think the real issue here is that Miss O says she tried to pay to rebook her flights and that there was a problem with that purchase. If she'd paid to rebook the flights, then I agree there'd likely have been a breach of contract here because B didn't carry out what

she'd paid for. I can see the payment was pending in her account, but it never debited. So whose fault is that? I think that's the key question.

AESEL's notes acknowledge Miss O carried out the flight change on B's website and the charge was approved through its system. But it says it didn't receive the claim from B, so it wasn't posted. I think this is important to highlight. If the issue with the payment was from AESEL then there might've been grounds to uphold the complaint on that basis. But I don't think I can fairly hold AESEL responsible for B not claiming the money from it. I therefore don't have the grounds to uphold the complaint.

I'm going to ask our investigator to provide Miss O with details of another Alternative Dispute Resolution Scheme (ADR) provider which may cover B. I'm not sure if her claim will succeed, but I hope she manages to find some success because I can understand why she thinks something has gone wrong. I should also point out she's free to pursue the complaint by other means, such as through the courts.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss O to accept or reject my decision before 1 March 2024.

Simon Wingfield
Ombudsman