

The complaint

Mr P has complained about how American Express Services Europe Limited (AESEL) responded to a claim for money back in relation to a purchase he'd made on his 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 in summary, Mr P paid £3,048 in August 2022 to a company I'll call "B" for two weeks' accommodation. The invoice sets out the price is broken down as:

Accommodation fare	£2,340
Cleaning fee	£160
Booking fee	£40
Accommodation fare adjustment	£508

Mr P was unhappy with the accommodation. He said it was misadvertised and that it was unclean throughout. Mr P said he contacted B to complain when he was there, and it arranged for some covers to be sent for the furniture. He said B arranged for a cleaner to come but she couldn't stay long and didn't bring the place up to Mr P's satisfaction. He said B did offer alternative accommodation, but this wasn't overlooking the beach. He said the alternative accommodation would've been smaller and without the view, so he refused it.

Unhappy with the stay, Mr P contacted AESEL to put in a claim under section 75 of the Consumer Credit Act 1974. AESEL's response to the claim broadly said:

- It had not been supplied sufficient evidence there'd been a breach of contract. After Mr P notified B of the issues it arranged to rectify things. It said B had offered Mr P a full refund for the remainder of the nights if he chose to leave but he declined this. It said as Mr P had utilised the service in its entirety it didn't need to take action.
- It also said the necessary conditions for a claim to be considered under section 75 weren't present because the payment had been made through a third-party business.

It did however offer £50 in relation to customer service issues during the claim.

Mr P was unhappy with the response and referred the complaint to our service. He also let us know B had refunded him £435.71 in November 2022. One of our investigators looked into things and said she also didn't think the necessary conditions for a valid claim to be considered were present. Not because of the way the payment was made, but because B's contract set out that Mr P's contract was with the owner of the property. And she didn't think she'd seen enough to show that B would be liable for the complaints Mr P was unhappy about.

Our investigator also thought about whether there'd have been any prospect of success through a chargeback. She didn't think there'd have been a reasonable prospect of success because of the offers made by B and taking into account the refund Mr P had received.

Mr P didn't accept the investigator's view. He said AESEL declined the claim for a different reason. He said the claim was for breach of contract and inconvenience. He reiterated earlier points and that he'd always dealt with B, and not the property owner.

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 Mr P 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 that Mr P was unhappy with the trip. I appreciate it cost a significant sum, and I can't imagine how he must've felt.

What I need to consider is whether AESEL – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr P'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.

Section 75 is a statutory protection that enables Mr P 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 him for the provision of goods or services. But there are certain conditions that need to be met for section 75 to apply. The value of the transaction falls within the financial limits. But there also needs to be a debtor-creditor-supplier (DCS) agreement in place. Having multiple parties involved can impact the arrangement.

In this case Mr P paid B, but B's terms and conditions say when booking through it, Mr P entered into a contract with the owner of the property. This would generally mean the DCS agreement is broken for any issues with the accommodation itself. And from reading B's terms and conditions, there's not obviously been a breach of contract between Mr P and B either. It says that for general issues, and cleaning issues the customer should contact it so that it can try and remedy things, which is what it did – although I appreciate that wasn't to Mr P's satisfaction. B's terms and conditions also set out in the event of a dispute it reminds the customer this is between the customer and the property owner. It will only act as an intermediary to try and resolve things.

Therefore, I don't think AESEL has joint liability for the breach of contract Mr P has complained about relating to the accommodation. And I don't think there was clearly a breach of B's contract it would be liable for either. I don't agree with AESEL's initial reasoning for declining the claim because I don't think the presence of what it called a payment aggregator breaks the DCS agreement in this particular case. But I don't think there are grounds to direct it to refund Mr P in relation to what it is liable for. I do appreciate that this is quite complicated, and Mr P may not have been aware when making the booking. But I can only uphold complaints where there are fair grounds to do so.

For completeness, I've also thought about 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. In this case, American Express is the card scheme. AESEL didn't think a chargeback would've had a reasonable prospect of success. I agree and will explain why.

Like our investigator pointed out, AESEL could have decided to raise a chargeback under services not as described, or defective. But I'm mindful B offered alternatives and remedies when Mr P contacted it for help. Mr P has ultimately used the whole service. And he's also received a part refund from B in relation to the problems. I think had a chargeback been raised it would have been defended on that basis.

Finally, AESEL agreed there were some failings in customer service when handling Mr P's claim, and it offered him £50. This is in relation to failing to tell Mr P about how long the claim might take to consider; placing him on hold for a long time; failing to email Mr P the claim form; and for not telling Mr P he wouldn't be credited during the claim process. The £50 compensation seems broadly fair given what went wrong. I'm not going to make any further directions. If for any reason the £50 payment wasn't made, AESEL should make sure it's paid.

My final decision

American Express Services Europe Limited said it has applied £50 to Mr P's account. I find this offer to be fair and reasonable in all the circumstances and make no further directions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 23 February 2024.

Simon Wingfield
Ombudsman