

## The complaint

Mr W 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 W paid £1,200 to an online marketplace for accommodation bookings I'll call "B" for a three-night stay in April 2023 using his AESEL credit card. I understand the booking with B was made by Mr W's wife.

Mr W says the property was advertised as a six-bedroom house, but it only had five bedrooms which meant his nephew had to share with his parents. Mr W said the house was dangerous, and unclean. Mr W also said he was unhappy with the host. Due to some issues, the host had asked him to leave on the last day with a partial refund, but I understand they came to an arrangement for him to stay. From what I've seen, Mr W contacted B to claim for a refund after the stay. He also contacted AESEL to dispute the transactions in April 2023. Mr W was unhappy with how AESEL dealt with the claim, so he referred a complaint to the Financial Ombudsman. Mr W requested a full refund because he says the service wasn't as advertised. He said he stayed at the property because it wouldn't have been reasonable for him to have returned home upon arrival. He also said he thought he should receive compensation.

AESEL agreed it could have handled the claim better. It said there were delays which meant it took longer than it should have done to handle. It said there was no regulated timeframe for dealing with the claim, but it applied a £30 credit to Mr W's card to say sorry. It didn't offer a refund of the booking.

Our investigator looked into things but didn't think Mr W had supplied sufficient evidence to support a successful chargeback. And he didn't think the necessary conditions existed for a valid claim to be considered under section 75 of the Consumer Credit Act 1974 because Mr W's wife made the booking with B. He thought AESEL's £30 offer was broadly fair for the service failings.

Mr W didn't agree. He said, in summary:

- The necessary conditions for a valid claim did exist.
- He'd supplied evidence the host of the property admitted the house only had five bedrooms and that the host claimed that was what was booked.
- He realised his case was weakened because he stayed for the whole trip despite the host's offer of a partial refund if he left. But he explained there were three families with children for a special event and it wasn't practical for them to leave.

I issued a provisional decision that said:

*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 W 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 W was unhappy with the trip. I appreciate it cost a significant sum and it was for a special occasion. 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 W'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 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. Mr W complained the property didn't have the number of bedrooms that was advertised. He said the accommodation was unsafe and unclean. And he was unhappy with the service from the host. I've reviewed the communication Mr W specifically highlighted with the host and with B. The problem from what I can see is that I don't think he supplied sufficient evidence the property was mis-advertised. The evidence about whether it comes with five or six bedrooms is incomplete and slightly conflicting. Mr W has shown an advert of the property saying it has six bedrooms from what looks like June 2023, after he stayed there. And I can see B referred to the booking having five. It's not clear from the booking that his wife booked six bedrooms. I also don't have any proof of the actual number of bedrooms (although I appreciate that's not straight-forward to evidence, particularly after the event). I'd like to have been more certain on this point. Moreover, I can't see an issue with the number of bedrooms was raised with the host or B during the stay. If it was something that was advertised and important to him, it's not clear why it wasn't raised straight away. It looks like something Mr W or his wife complained about afterwards. I have no way of knowing, for example, if the matter could have been remedied by the host opening one of the rooms Mr W said was locked.*

*Mr W also complained about the quality of the overall accommodation but, again, I can't see this was raised with B during the stay. It looks like he raised it with B afterwards. And he's supplied a few photos of things he was unhappy about. B's terms say it can help with major inaccuracies, but not minor inconveniences. They say the guest needed to contact the host within 72 hours of discovering the problem to see if they can resolve it, and if they didn't, the guest could contact B. B would help the guest look for a similar place to stay depending on availability or it would offer a full or partial refund. I can't see Mr W (or his wife) took those steps relating to the things they subsequently complained about. I can see that from looking through the chat history with the host, it looks like the host wanted Mr W's party to leave the property because she was unhappy with certain things and said she would refund for the final day. But they managed to come to an arrangement for the party to stay.*

*While I'm sorry to hear Mr W wasn't enjoying the trip, I need to think about the strict dispute conditions for chargeback. As I've said above, something going wrong with a merchant won't always lead to a successful claim. Based on the evidence he supplied, I don't think there'd have been a reasonable prospect of success for services defective or not as described. There's not enough evidence to support the services weren't as described. And I think B would've had a valid defence for a chargeback for defective services because of its terms and conditions. I don't think there were grounds to say AESEL should have pursued a chargeback further because I don't think there'd have been a reasonable prospect of success.*

*Section 75 is a statutory protection that enables Mr W 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 W's wife made the booking with B. So she is a contracting party with it. Mr W, however, has explained he made the booking with his wife, and has indicated the contract was part of his joint affairs. He's implying he's also a contracting party. This is quite a complicated area, and it's not simply decided on 'benefit'. But even if I were to find Mr W was a contracting party, for the same reasons I've mentioned above, I'm not persuaded there's sufficient evidence of a breach of contract or misrepresentation that AESEL would be liable for. So I don't find there's grounds to uphold the complaint on that basis.*

*However, I agree that AESEL could have handled the claim more efficiently. I think it took too long in dealing with things. And even by the time it issued a final response letter AESEL hadn't fully answered the claim. While AESEL says there's no regulatory timescale for dealing with the claim, I'm mindful the Financial Conduct Authority (FCA) set out guidance in 2021 titled: "Cancellations and refunds; helping consumers with rights and routes to refunds" that says We expect credit and debit card providers to handle section 75 and chargeback claims in a reasonable timescale, and remind firms of their obligations to treat customers fairly. If there are delays in processing claims, firms should clearly explain the reason for the delay. I don't think AESEL has shown it did that. While I don't think the overall answer to the claim was likely unfair, I think the way it was handled has caused some overall inconvenience to Mr W.*

*In all the circumstances, I think the compensation should be increased to £100. AESEL can offset £30 if that's already been paid to Mr W. I think this is a fairer reflection of how things were handled.*

AESEL accepted the proposal and said it would pay an additional £70 by cheque. Mr W responded to say he believed he'd supplied sufficient evidence the property was advertised as having six bedrooms. But he said he broadly accepted the decision.

### **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'd like to thank the parties for their responses. Seeing as though neither party has submitted anything materially new for me to consider, I see no reason to depart from the conclusions I reached in my provisional decision.

**My final decision**

My final decision is that I uphold this complaint and, to the extent it's not done so already, direct American Express Services Europe Limited to pay Mr W £100.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 26 March 2024.

Simon Wingfield  
**Ombudsman**