

The complaint

Mr Y complains that American Express Services Europe Limited didn't provide him with the service it should have after he raised a dispute about flights he paid for using his AMEX credit card.

What happened

Mr Y bought tickets for himself and his husband using his AMEX card for flights to take place on 20 July 2023. In early July 2023 he had a dispute with a member of the airline staff and on 5 July 2023 he received an email from the airline's corporate security saying that he was no longer welcome as a customer of the airline and that all future bookings would be cancelled. Following this Mr Y rebooked his flights with another airline and requested a refund of his flights that had been cancelled. The airline reservations team said it had no knowledge of the letter from its security team and his flights hadn't been cancelled.

Mr Y raised two chargebacks (one for each ticket) with AESEL. He said that he had no idea when the flights would be cancelled and couldn't risk turning up at the airport and his flights being cancelled at the last minute which was why he rebooked his tickets with a different airline. He said that one dispute was initially upheld (this was later reversed) but the other wasn't.

AESEL issued a final response letter dated 10 August 2023. It noted that in its letter dated 26 July it said that based on the information it had received it wasn't able to validate Mr Y's reason for re-disputing the charge. Regarding his other dispute it said its letter dated 10 July set out that a credit was applied to Mr Y's account but that if the merchant provided documentation to support the charge, then the credit could be reversed. It said that the merchant had sent documentation in regard to the charge, and this was being reviewed. It paid Mr Y £25 as a gesture of goodwill in recognition of the time he had spent chasing this issue.

Mr Y wasn't satisfied with AESEL's response and referred his complaint to this service.

Our investigator didn't uphold this complaint. He said that the merchant had defended the chargebacks stating that the tickets Mr Y bought were non-refundable. Given this he didn't think that AESEL was wrong to decline the chargeback claim. Our investigator also considered Mr Y's dispute under section 75 of the Consumer Credit Act 1974 but he didn't find evidence that there had been a misrepresentation or breach of contract. He thought the £25 AESEL provided Mr Y was reasonable for the service issue Mr Y had raised.

Mr Y didn't agree with our investigator's view. He set out again the areas in which he felt AESEL had failed him in regard to his disputes, including engaging him over an extended period giving him hope and assurance that his chargeback would be successful. He said he had made several calls to AESEL and written to it to explain the full situation, but it didn't seem to be fully aware of the facts. Mr Y reiterated that he booked travel which he was then told would be cancelled and while the tickets were non-refundable it was the airline that had said these would be cancelled and no longer available to him.

My provisional conclusions

I issued a provisional decision on this complaint, the content of this is set out below.

Chargeback is the process by which settlement disputes are resolved between card issuers and merchants under the relevant card scheme.

In this case, Mr Y has explained that he tried to resolve the issue with the airline but wasn't able to get a response, so he raised chargebacks for the two tickets he bought. Initially he complained that he received different outcomes for the two chargebacks with one being upheld in his favour and the other one not. However, following further evidence being provided by the merchant the chargeback that Mr Y referred to being upheld had the initial credit reversed. Based on this I have considered whether I think AESEL acted fairly in its response to Mr Y's chargebacks and if not, whether it is required to take any further action.

Mr Y has explained that when he raised his chargeback, he was advised by AESEL that the reason would be recorded as 'goods not received'. Given the circumstances of this case I think this was a reasonable approach. I can see that AESEL confirmed in response to Mr Y's chargebacks that his account had been credited with the disputed amounts while the investigations took place, and the issue was being forwarded to the merchant. I can see the chargeback was raised as 'I haven't received my order/item/service'. I find that the initial actions taken by AESEL were reasonable and what we would expect given the circumstances.

Following contact with the merchant the merchant said that the flights were for a future date and still available for Mr Y to use. In response to Mr Y's second chargeback AESEL's letter asked for further evidence including proof if the services had been cancelled by the merchant. Mr Y resent AESEL a copy of the communication he had received from the airline's security team dated 5 July 2023 stating that any reservations Mr Y had with the airline would be removed and all bookings cancelled automatically.

While it appears that the airline's reservations team hadn't cancelled Mr Y's future bookings, given the event that had previously happened between Mr Y and the airline and the notice he had received from the airline's security team, I think it was reasonable that Mr Y believed his flights could be cancelled at any time and were therefore not available for his and his husband's use. As Mr Y sent this information to AESEL I think it would have been reasonable for it to have pursued the chargeback.

I cannot say what would have happened had the chargeback been pursued and given the time that has passed since the event date, the chargeback is now out of time. However, given the airline had told Mr Y that all his future bookings would be cancelled, I find it reasonable to accept that the service he had paid for wasn't being supplied.

I note the comments about the tickets Mr Y purchased being non-refundable. I have considered this but in this case as Mr Y wasn't cancelling the tickets, instead the service was being withdrawn from him, I do not find this should affect his chargeback claim.

Therefore, on balance, I think that AESEL should have done more in response to Mr Y's chargebacks as he had provided evidence of the services he paid for no longer being available for use. Because of this I uphold this complaint.

As I am upholding Mr Y's complaint regarding the chargebacks, I haven't considered any potential claim under section 75.

I note Mr Y's comments about the service he had received while trying to get a resolution to his complaint and I appreciate that he felt he was being given false hope about the outcome.

But I find that AESEL did communicate with Mr Y in response to his chargebacks and while I note his comments about not wanting to receive letters, AESEL has explained that letters are sent when it needs to provide certain personal identifiable information. Given this and noting that AESEL paid Mr Y £25 as a gesture of goodwill for the service issues, I do not require it to do anything further in regard to this part of Mr Y's complaint.

Taking everything into account, I find the fair outcome to this complaint is for Mr Y's credit card account to be reworked to reflect the situation had the transactions for the tickets not been made.

AESEL responded to my provisional decision saying it had no further information to add.

Mr Y noted that I had upheld his complaint in regard to the chargeback and not considered it under section 75. He asked that his complaint be assessed under section 75 and that compensation be awarded for the distress and inconvenience he was caused having to deal with this issue and the failings that he encountered from AESEL noting he had to repeatedly make his case. He feels that AESEL should have upheld his claim at the outset and that he was given false hope through the process when he spoke to advisers only to then be told his claim wasn't to be upheld. Mr Y also noted that as he paid his balance on his credit card in full each month that the reworking of his credit card balance would result in a refund.

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.

As I explained in my provisional decision, Mr Y raised a claim for tickets he bought that he wasn't then able to use and I find that AESEL initially took the appropriate action by raising a chargeback. AESEL received information from the merchant about the flights still being available. However, Mr Y had provided evidence to show this wasn't the case. Given this I think that AESEL should have continued with the chargebacks. I cannot say for certain that the chargebacks would have been successful but based on the service Mr Y paid for not being provided to him I think AESEL should have done more to pursue the chargebacks. Because of this I uphold Mr Y's complaint.

Mr Y has asked about his complaint being considered under section 75. My role is to consider the actions taken by AESEL in response to Mr Y's claim. In this case I think it reasonable that a chargeback was raised. As I have explained I think this should have been pursued further and the redress I have set out requires AESEL to put Mr Y back in the position he would have been had his claim been upheld when Mr Y first raised this.

If the chargeback hadn't been an appropriate remedy then I would have considered whether the claim was covered by section 75. In considering this I would need to establish the debtor-creditor- supplier relationship and that there had been either a breach of contract or misrepresentation. However, given I have already upheld this complaint in regard to the actions taken in response to the chargeback, I do not find that it is necessary to consider the complaint under section 75.

I understand that Mr Y feels he should be paid compensation for the poor service he says he received from AESEL. He has said £25 he has received was for the time taken on calls and he doesn't feel that adequate consideration has been given to the distress and inconvenience he has been caused while trying to resolve this issue. I understand why Mr Y feels this but, in this case, I do not require AESEL to take any action beyond the reworking of Mr Y's credit card. I have considered the service he has been provided and as I set out in my provisional decision, I think that AESEL did communicate with Mr Y in response to his

chargebacks and explained why letters needed to be sent. It issued a final response letter within a reasonable timeframe and provided him compensation for the time taken to chase the issue. The final response letter provided Mr Y with his referral rights to this service. So, while I know this will be disappointing for Mr Y, I find that the fair remedy is for the rework of his credit card.

I note Mr Y's comment about always paying his account in full and as set out in my redress, if the reworking results in a credit balance, then 8% simple interest per year should be added to the credit balance from 6 July 2023.

Putting things right

American Express Services Europe Limited should rework Mr Y's credit card account to reflect the transactions for the tickets not having been made. If this results in a credit balance, 8% simple interest per year should be added to the credit balance from 6 July 2023 (when Mr Y raised his dispute) to the date of settlement.

My final decision

My final decision is that I uphold this complaint. American Express Services Europe Limited should take the actions set out above in resolution of this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 17 April 2024.

Jane Archer
Ombudsman