

The complaint

Mr K has complained about American Express Service Europe Limited's (AESEL's) handling of his claim.

What happened

Mr K booked accommodation abroad via an agent I shall call "F" during 2023 for a total sum of £636.19. This comprised of two payments of £272.01 and £364.18. The stay was booked from 22 December 2023 for seven nights, however Mr K said the accommodation wasn't as described. He says the pictures on F's site gave the impression the property was more secluded than it was. In addition they've said the swimming pool was unsafe as there was a missing drain cover and there were loud construction works from a neighbouring property which they weren't informed about.

Mr K departed the premises early the following day and booked alternative accommodation. He asked the owner of the property for a refund upon his departure and as the matter remained unresolved, he contacted AESEL to raise a chargeback claim against F and a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against AESEL.

AESEL raised a chargeback claim for both of Mr K's payments on 27 December 2023, however these were disputed by F. They referenced their terms and conditions and said that Mr K hadn't followed their cancellation policy.

AESEL then declined both chargeback claims as they felt there wasn't a prospect of success. F still arranged a partial refund of £233.15 on 27 December 2023 and a further £200.00 on 3 January 2024, totalling £433.15 to address the complaint for Mr K. Regarding the S75 claim, I note AESEL didn't raise this alongside the chargeback claim. Mr K also mentioned the alternative accommodation was more expensive and he'd been left further out of pocket for having to rebook his stay due to these circumstances. Our investigator said there wasn't a prospect of a refund for these consequential losses under the current claims with AESEL.

As Mr K remained dissatisfied, he asked for an ombudsman to issue a final decision on the matter.

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 previously issued a provisional decision. In summary I said:

"I've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally."

It's important to note that AESEL aren't the provider of the services here – so in

deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr K paid for this transaction using his credit card, both chargeback and a S75 claim could possibly help him. So in deciding what is fair and reasonable I've focussed on this.

Chargeback

There is no requirement for AESEL to raise a chargeback, but it is often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case AESEL's own scheme rules). I've considered the relevant chargeback rules in deciding whether AESEL acted fairly.

The relevant chargeback reason code here would be 'Goods / Services Not as Described' as Mr K said the accommodation wasn't as expected. I've considered Mr K's complaint points in turn:

- I've reviewed F's current listing of the property and note it looks to be the same as from the time of Mr K's booking. Mr K said that the listing gave the impression of it being secluded when it wasn't and he has provided his own photographic evidence regarding this. I've reviewed the description of the property and it describes it as a 'charming villa in the countryside' but nothing specific about it being secluded.*
- I've also considered the photographs from both F's site and Mr K's submissions and understand Mr K is referring to adjacent properties in the distance that don't seem to be in the listing. I do note these properties do seem quite far and this element of seclusion would be quite subjective. I therefore can't agree that this comparison means the property wasn't as described.*
- I also understand that there wasn't any information on the listing at the time of booking regarding repair works in adjacent premises. The hosts have addressed this in their reply to Mr K's complaint by saying that the repair works had been ongoing for the previous three weeks and Mr K's arrival date was the last day of work.*

This suggests to me that the owners didn't anticipate disruption to Mr K after his arrival. They also said the bulldozers were at the very bottom of the premises and previous guests hadn't complained. While I appreciate Mr K wasn't notified of these works, I can't agree that this issue would mean the property wasn't as described.

- Lastly Mr K has sent a picture of the swimming pool drain, stated it was missing the cover and has provided evidence of communication with the owner prior to the stay confirming they were looking forward to swimming. I see the property description does talk about the fact a swimming pool is available. I appreciate on this point there is a question of the usability of the pool and so if this element of the accommodation wasn't as described. I've explored this issue later in this decision regarding the S75 claim and if this meant there was a breach of contract by F*

I see AESEL accepted F's defence to Mr K's chargeback claim based primarily on their cancellation terms. F provided screenshots of what was visible to Mr K when he

confirmed their booking and this had a link to the cancellation policy for the listing. In summary there wouldn't have been a refund due following the check-in date, however Mr K has said that he wouldn't have known of the issues prior to arrival anyway.

Therefore I'm not satisfied AESEL's approach to this chargeback claim was appropriate as it was less about Mr K's right to cancel, and more about consideration of whether the property wasn't as described. Their final response says they felt there wasn't a prospect of success per F's cancellation policy but they did note Mr K had been offered a partial refund.

I don't think there was a likely prospect of success for the chargeback claim for the 'service not being as described' with consideration of the property listing overall. While I appreciate there were building works, they weren't on site but adjacent and in addition the owner's said Mr K arrived on the last day of the works. Likewise I don't see anything in the listing specifically promising seclusion for residents of the property.

I do appreciate though that a swimming pool was promised but there were concerns due to a missing drain cover which dissuaded Mr K from using it. F did consider Mr K's complaint overall and decided to offer a partial refund of £433.15 in total which would be a 68% refund of the total price paid.

It would be appropriate for a partial chargeback under these circumstances and with consideration that Mr K did still stay one night, even if this was due to the fact other accommodation possibly couldn't be arranged earlier. I do consider the refund offered was significantly more than what would've been expected as a resolution had it proceeded to arbitration and been found in his favour.

I must also add that while Mr K has mentioned consequential losses for having to book further accommodation, the purpose of the chargeback claim would be to restore the original losses from the transactions and not any other incurred. Therefore I don't think AESEL need do anything more regarding their handling of Mr K's chargeback claim.

S75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

But for there to be a valid claim under S75 there are certain criteria that also need to be satisfied. One of these is that there needs to be a valid agreement between the debtor who took out the finance and the supplier of goods or services in dispute.

In this case the debtor is Mr K who took out the finance with AESEL via his credit card. However, the question is whether Mr K has the required contractual agreement with the supplier of the accommodation or with F for there to be a valid Section 75 claim for which AESEL is liable.

So I need to decide if the necessary agreement exists for a valid S75 claim. Mr K has provided a booking confirmation of the stay and in addition F's chargeback submissions include a receipt and reservation details. F has also provided confirmation that Mr K did accept their terms and conditions online through his

registered account. Upon review of this evidence I'm satisfied Mr K did contract with F for the provision of this accommodation.

In terms of whether there is also the required contractual agreement with the accommodation provider, I note section 17 of F's terms of service defines its role as the following (the agent's name has been substituted by 'F'):

"We offer you the right to use the platform that enables Members to publish, offer, search for, and book Host Services. When Members make or accept a booking, they are entering into a contract directly with each other. F is not and does not become a party to or other participant in any contractual relationship between Members".

Based on these terms Mr K contracted with the host directly regarding the provision of the accommodation. As Mr K's booking payment went to F rather than the accommodation hosts, this means the latter wouldn't be party to the S75 claim and so I can't look at anything they'd be specifically responsible for. I can however look at the responsibilities of F in terms of their own contractual relationship with Mr K. And for that, I see F does provide cover for when things go wrong under their buyer protection which it says is included for every booking. Specifically under 'Inaccurate listings', F's website says the following:

"If the listing is significantly different than advertised your host is a great resource to fix the issue. If the listing is significantly different than advertised and your host can't resolve the issue, we'll help you find a similar place, depending on the availability at comparable pricing. If a similar place isn't available or you'd prefer not to rebook, we'll give you a full or partial refund".

However there are financial limits required for a S75 claim that I must also consider. As we are only looking at F's services here, that would need to be at a cash price of over £100 but no more than £30,000.

I've reviewed F's service fee breakdown on their site (which should include the buyer protection) and they state it would've been visible to Mr K in his price breakdown prior to making his reservation. While I don't have a copy of this I note that F has also said that most guest service fees are under 14.2% of the booking subtotal but also note that this can vary and may be higher or lower depending on the booking. In the absence of any further information, I can't say I've sufficient evidence that the financial requirements of S75 haven't been met.

I must add that AESEL themselves didn't raise a S75 claim alongside the chargeback claim and our investigator didn't address this themselves. I do think this should've happened though to determine whether there has been a breach of contract or misrepresentation here.

The buyer protection terms and conditions say the listing has to be 'significantly' different than advertised and so I've considered if this is the case for the issues noted by Mr K. For the issue of the seclusion I can't see any assurances of this in the property listing, and likewise while there were repair works in adjacent premises the evidence suggests these were some distance from Mr K's accommodation. The host also said it was the final day for those works.

Finally Mr K has provided photographic evidence of the missing swimming pool drain cover. I appreciate that this may constitute a safety issue. I've reviewed the buyer protection terms and conditions for F and note it does say that safety and health hazards would be considered a 'reservation issue' and F would need to be notified of

this within 72 hours for them to then consider an appropriate remedy. I've insufficient evidence F was notified within this time frame and so they didn't have an opportunity to investigate then. I know Mr K was keen to move to an alternative property but F would need to be notified appropriately so they can then consider the appropriate remedy under their buyer protection terms and conditions, which could include finding alternative accommodation, if necessary. I therefore can't say there has been a breach of contract there.

With all of this in mind, if a S75 claim had been considered, I can't agree this would mean that the listing was 'significantly' different and therefore it constituted a breach of contract. As a final point Mr K has mentioned consequential losses due to booking other accommodation. I don't think AESEL would be liable as a breach of contract or misrepresentation by F hasn't been appropriately established.

In summary

While I do think AESEL should've done more regarding their handling of the chargeback claim as well as the fact a S75 claim wasn't raised at all, F did provide a partial refund and while I appreciate Mr K feels a full refund is due, I don't agree for the reasons explained.

Had AESEL completed a full chargeback investigation on whether the accommodation had not been as described, there may be a reasonable argument to say it would've been unsuccessful had it been taken further to arbitration stage. I say this due to the subjective nature of the aspects raised by Mr K and with consideration of the evidence presented.

Even with that in mind, had it been successful at arbitration stage, I think a partial chargeback would've been fair here. I think the amount refunded is more than what I'd consider reasonable here and therefore I think it unlikely that a chargeback claim would've been successful for a greater amount had it proceeded to arbitration.

As I also have insufficient evidence of a breach of contract or misrepresentation for a successful S75 claim here, I don't think AESEL need do anything further".

AESEL responded to my provisional decision to say they accepted the findings. Mr K also responded to say he didn't have anything further to add beyond the fact he still felt the original images advertised by F were not representative of the level of seclusion and he also felt the issue with the swimming pool was sufficient for a full refund.

As I've addressed both matters in my provisional decision and my position remains the same, I won't be addressing this further.

My final decision

For the reasons above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 11 July 2025.

Viral Patel
Ombudsman