

The complaint

Mr S complains that American Express Services Europe Limited (AESEL) or “Amex” didn’t treat him fairly when he requested a refund of a payment made with his credit card.

What happened

Mr S used his Amex credit card to pay for a rental car booking in October 2023. The booking cost £275.51 for five days car hire, with airport pick-up on 25 December 2023.

When Mr S arrived at the airport rental location he was told that the car he’d booked and paid for was unavailable. The representative of the hire company (which I’ll call Company E) told Mr S that it wasn’t known when the car, or a similar one, would be available, and the only alternative was to hire a car from a more expensive category. Mr S said he had booked the car to travel to and from his accommodation, over an hour’s drive away, and it wasn’t likely he’d be able to hire a car from another company at that time with no notice. Mr S hired the more expensive car at an additional cost which he also paid using his Amex credit card. The transaction amount was £1,391.54, shown on Mr S’s credit card statement on 25 December 2023.

Mr S complained to Company E a few days into his trip but was unsuccessful in obtaining a refund of the additional cost. In February 2024, Mr S asked Amex for help obtaining a refund under Section 75 of the Consumer Credit Act 1974 (CCA). The CCA offers protection to consumers by making the lender jointly and severally responsible for any misrepresentation or breach of contract by the supplier of goods or services paid for with credit.

Amex rejected Mr S’s claim for a refund under Section 75. It said that the terms and conditions of the booking stated that if it wasn’t possible to provide the requested vehicle category then an alternative would be presented, potentially at a new rate. Mr S had agreed to this new rate by entering into the rental agreement.

Our investigator looked into Mr S’s complaint and found that Amex hadn’t treated Mr S fairly when it declined his refund request. They found that Company E had breached its contract with Mr S when it failed to provide him with a car from the vehicle category he’d booked, and they recommended that his complaint be upheld.

Amex disagreed with this recommendation and asked for the complaint to come to an ombudsman 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.

Section 75 of the CCA offers protection to consumers by making the lender jointly and severally responsible for any misrepresentation or breach of contract on the part of the supplier of goods or services paid for with credit. I’m satisfied the CCA is relevant here taking into account the costs involved, the amount Mr S paid for with his credit card and the

relationships between the parties involved. I've considered whether a misrepresentation or a breach of contract occurred here, and whether Amex treated Mr S unfairly by not providing him with a refund as he'd asked.

I want to reassure both parties that I have reviewed all the available evidence, and if I don't mention any particular points it is not that I haven't considered these but rather that I've focussed on setting out my reasons for my decision. I appreciate that this will be disappointing for Amex, but I agree with the conclusion reached by our investigator for the following reasons.

Mr S said he was told the car he'd booked and paid for was unavailable because it had not yet been returned by the previous hirer. Amex said that Company E said the car had been returned but was not yet prepared for re-hire. In either case, it is not in dispute that the car Mr S booked was unavailable.

It is also not in dispute that upon Mr S's arrival there wasn't an alternative car for him to hire from the same vehicle category, in other words at the price point he had reserved, and that his only option was a more expensive hire. Company E's (translated) digital customer notes state that *"The reserved vehicle was not available, they are offered an upsell for available Mercedes or wait for an SUV. The client decided to take Mercedes so as not to wait because we could not guarantee wait time."*

Company E said that Mr S was offered an 'additional optional product' at an additional cost and that it was up to him to accept or decline this. It declined his refund on the basis that Mr S signed the rental agreement and accepted the charge for the upgrade. Company E also said that at the point of hire Mr S was offered the option to take the more expensive car and when the vehicle from the category he'd reserved was ready it could be provided to him at his location, but Mr S declined. Mr S said that he was not offered this option. I haven't seen any evidence that this was in fact offered to Mr S, and have not considered this point further.

The relevant terms and conditions are set out on Company E's website under the heading 'Online Booking Terms and Conditions'. These terms and conditions include the following policy, which I've replicated in full below:

"VIII. Guaranteed Reservation Policy

[Company E]'s rental location (check out location) is required to provide, within a given period, the requested vehicle category as confirmed at time of booking and subject to the renter meeting rental requirements.

A confirmed reservation is guaranteed for one of the following periods until the closing time of the rental location on the given date:

*For one (1) hour after the due check out time for the standard level of service,
For two (2) hours for the Ready service at a Ready rental location,
For three (3) hours for First cardholders at any rental location,
For no limit of hours for any prepaid booking.*

At airport rental locations the reservation is guaranteed - for all service levels - for one (1) hour after the actual flight arrival time if the reservation has been quoted with a flight number, subject to the following exception:

When a reservation has been quoted with a flight number and the flight has been delayed after the due closing time of the station, some Airport rental locations may remain open until

the flight's arrival up to a maximum of 2 hours according to the same rules as defined above. An after-hours charge may apply. After the guaranteed period and prior to no-show listing One, two or three hours (according to the service level) after the due check out time and until the reservation is listed as a no-show (closing time of the rental location), [Company E] will make its best endeavours to provide the requested car category.

If this is not possible, an alternative will be presented to you and, if you agree, another car category will be delivered and charged (new rate may apply), subject to your meeting the rental requirements."

Amex said that this policy wording means that if it is not possible to provide the requested vehicle category then an alternative from another vehicle category will be presented, potentially at a new rate. I don't consider this to be a reasonable interpretation. If this were the case then there would be no requirement under any circumstances to provide the requested vehicle category.

It seems to me that a reasonable interpretation of the Guaranteed Reservation Policy is that the final sentence beginning "*If this is not possible...*" applies solely to previous sentence beginning "*After the guaranteed period and prior to no-show... [Company E] will make its best endeavours to provide the requested car category.*" And so there is a requirement to provide the requested car category, but only within the relevant guaranteed period.

From what I've seen, Mr S arrived at the airport rental location within an hour of the due check out time of 3.30pm. He had pre-paid and the airport rental location was open. By all measures Mr S was at the airport rental location within a guaranteed period, not after. Therefore his requested vehicle category as confirmed at time of booking should have been guaranteed.

This seems to me to be in line with the reassurance given on Mr S's pre-paid booking confirmation email sent from Company E on 31 October 2023: "*If your flight VB [****] is delayed, we will keep your vehicle for you until our office closes.*" The opening hours of the airport rental location were stated on the email as being 6:00 am - 11:59 pm.

I've noted that these Online Booking Terms and Conditions are one iteration of a suite of such policies set out on Company E's website and accessed by country. Selecting the United States, Australia, Zimbabwe or Belgium, to choose wide-ranging examples, bring up policy documents that state in the same paragraph that "*[Company E] will endeavour to provide the requested car category after the one hour period and until the reservation is listed as a "no-show" (at the closing time of the rental pick up station). If this is not possible, an alternative will be presented to you and, if you agree, another car category will be proposed and charged (new rates may apply), subject to you meeting the rental requirements.*" The wording of these documents suggests to me that my interpretation is consistent with this policy's intent, which is that outside of the guaranteed periods it might not be possible to provide a car from the reserved category and new rates may apply.

Even if I were to find that Amex's interpretation of the policy was also a reasonable one, and so the policy was ambiguous, I would not consider it to be fair or reasonable of it to choose the interpretation which disadvantaged Mr S.

Altogether, I've concluded that Company E was required to provide Mr S with the vehicle category as confirmed at the time of booking and not doing so, in the circumstances of this case, breached the terms of its Guaranteed Reservation Policy, part of its Online Booking Terms and Conditions.

Amex said that there seemed to be no terms and conditions which specifically highlighted what should happen in the event of a reserved vehicle being unavailable. I've considered what actually happened in this case, which was that Mr S paid an additional cost in order to continue with his booking. I'm satisfied that he would not have paid this but for the breach of contract and so I've concluded that Mr S lost out financially as a direct consequence of this breach.

I have noted that the context in which this Guaranteed Reservation Policy sits is that all of the other policy iterations mentioned above state that *"If the vehicle category cannot be provided, alternative solutions will be proposed at no additional cost to you, within one hour of arrival."* And *"If the vehicle category cannot be provided during the period [Company E] will offer you: - An upgrade at no additional cost; OR - A downgrade (at the relevant category price) and compensation (such as an upgrade voucher for a future rental)."* In other words, whatever happens inside of the guaranteed periods should not lead to the customer incurring additional cost.

I understand that the Mercedes was the only option offered to Mr S by Company E, and so this wasn't a case of him selecting a vehicle from an expensive category when a less expensive one was available. The circumstances in which this breach occurred were that it was a national holiday in the rental country and Mr S planned to travel over 100km to reach his accommodation. So I think Mr S was likely to have been quite limited in alternative travel options, such as car hire from another company, private taxi or public transport. I don't think Mr S missed an opportunity to mitigate the loss he incurred due to the breach.

Altogether, I've concluded that Amex didn't treat Mr S fairly or reasonably when it declined his request for a refund of the additional car hire costs he paid on 25 December 2023.

Putting things right

In order to put things right for Mr S, Amex should now:

- Rework Mr S's credit card account as if the payment of £1,391.54 on 25 December 2023 had been refunded from when it first declined the claim;
- Refund any interest, fees, or charges which Mr S has incurred because of the transaction remaining on his account; or
- If the rework leads to a credit balance on his account, Amex should pay 8% simple interest from the date the balance would've arisen to when it ceased to exist.

My final decision

For the above reasons, I am upholding Mr S's complaint about American Express Services Europe Limited (AESEL) and it now needs to put things right for him as I've set out.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 25 February 2025.

Michelle Boundy
Ombudsman