

## **The complaint**

Mr L complains American Express Services Europe Limited (AESEL) should have done more to help him get a refund for flights he believes were misdescribed.

## **What happened**

The facts of the case are well known to both parties, so I won't repeat them in detail here.

On 1 February 2024, Mr L paid £384 on his AESEL credit card to an airline (which I'll call "V") for return flights for Mr L and his mother. They were due to fly out on 25 February 2024 and return on 1 March 2024. The flights were over three legs.

When Mr L received the booking confirmation he noticed the journey's second leg, unlike the other two, didn't include checked baggage. He thought this was a mistake because he remembers V's online booking process indicated checked baggage was included.

On around 2 February 2024, Mr L said he contacted V's sales team who, after agreeing there was an error, referred the issue to V's support team to investigate. However, the support team concluded there was no error and checked baggage wasn't included. They proposed Mr L purchase checked baggage as needed up to six hours before the flight.

Mr L added an additional checked bag for himself for £6.50 to mitigate his losses. He said he went with the "safe option of least expense" and instead of adding a second bag for his mother, they tried to make do with just the one bag between them. This meant they had to omit certain items they would have otherwise packed and had to leave certain items behind on their return from holiday. Because of the distress and inconvenience this caused, he asked AESEL to help him get a full refund for everything he paid.

In March 2024, AESEL raised two chargebacks on Mr L's behalf, for £192 each. Mr L received these as temporary credits to his account on around 18 March 2024. However, after V defended the chargebacks, AESEL decided the claims had no reasonable prospects of success as Mr L couldn't show checked bags were included. It discontinued the claims.

In May 2024, AESEL considered Mr L's claim under section 75 Consumer Credit Act 1974 (CCA), which in some circumstances could make AESEL responsible for a breach of contract or misrepresentation by V. But after considering Mr L's evidence, it declined his claim as it didn't think he could sufficiently show any breach of contract or misrepresentation.

Our investigator looked into Mr L's concerns but didn't think AESEL acted unfairly. The complaint's come to me for a 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've considered all the available evidence and arguments to decide what I feel is fair and reasonable in the circumstances of this complaint. This includes the relevant laws, regulations, guidance and standards, codes of practice and good industry practice. And where it's unclear what's happened, my conclusions are based on what I think is most likely to have happened given the information available.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality. I'd like to assure both parties I've considered everything they've sent, including the various submissions and evidence Mr L sent after the investigator's assessment.

It's important to note that AESEL didn't supply the flights Mr L paid for. So to decide if it acted fairly, I need to consider its role as a provider of financial services only. As Mr L used his credit card to pay for the flights, I need to consider how AESEL could have reasonably assisted him through the protections offered by the chargeback process and section 75.

### Chargeback claims

When someone buys something with their credit card, and something goes wrong, the card issuer can sometimes help them obtain a refund by raising a chargeback on their behalf. There's no obligation for a card issuer to raise a chargeback for a customer – but I'd expect it to do so if a chargeback has reasonable prospects of succeeding.

The rules governing the chargeback process are set by the relevant card scheme – in this case, that would be American Express. These rules set out strict conditions that must be satisfied for a chargeback claim to be successful. I'd expect a card issuer like AESEL to apply the scheme rules correctly and conduct the chargeback process fairly.

It's important to note the chargeback process here doesn't cover consequential losses resulting from any breach of contract. It also doesn't cover non-financial losses generally – such as the distress and inconvenience Mr L said he suffered by not receiving the extra bags. Further, chargebacks are generally limited to the portion of services that haven't been received. I think both these limitations of the chargeback process would make it difficult for Mr L to successfully claim the full £384 he paid, given all the flights were used.

However, notwithstanding the strict limitations of the chargeback process - Mr L's claims otherwise hinged on him being able to show he didn't receive part of the service he paid for. Or more specifically, showing the checked bags V said were meant to be included weren't.

In support of his claim, Mr L sent AESEL substantial evidence including his emails with V, such as the one identifying V's sales office thinking there may be an issue, screenshots of the booking process indicating a checked bag was included, and his itinerary showing the checked bag was missing from the second flight.

In defence, V provided evidence showing Mr L and his mother used their tickets and that those tickets show the second leg didn't include any checked bags. The itineraries it provided also indicated that the type of ticket Mr L bought – "Economy Super Lite" – doesn't always include the free baggage allowance on certain routes.

I've thought carefully about AESEL's decision to stop the chargeback process after receiving V's defence. The tickets were used in their entirety, and I think V provided compelling evidence Mr L and his mother (1) hadn't purchased any extra bags and (2) were never meant to receive a free bag allowance for the second leg. If the allowance had applied, it would likely say so on the tickets. For all practical purposes, Mr L received what he paid for.

I appreciate Mr L says V led him to believe free checked baggage was also included, based on a screenshot he provided indicating the tickets included checked baggage. The screenshot alone appears to show checked baggage is included. However, Mr L only submitted part of the booking process as evidence. As it appears the free checked baggage was conditional, and those conditions may have been portrayed elsewhere in the booking process, I don't think the screenshots alone were enough here to support the claims considering V's defence. So I don't think the claims had reasonable prospects of success.

I wouldn't consider it unreasonable for card providers to raise a chargeback, even if they might not succeed, because sometimes chargebacks are successful if they're not defended. But if during the chargeback process it becomes clear a chargeback is unlikely to succeed, I wouldn't generally consider it unfair for a card provider to stop the process. As I think that's what happened here, I don't find AESEL acted unfairly by discontinuing the chargebacks.

#### Liability under section 75 Consumer Credit Act 1974

Under section 75 CCA, Mr L can hold AESEL responsible for a "like claim" he would have against V for a breach of contract or misrepresentation. As I'm satisfied the criteria for section 75 CCA are met, I've focused on whether there's enough evidence to show a breach of contract or misrepresentation by V.

The onus is on Mr L to prove a misrepresentation or breach of contract. For him to prove either, it's clear to me he must first show that V's overall description of the flights reasonably give the impression that checked baggage was included.

Mr L says the booking process showed that his second-leg flight included checked baggage. If this was untrue, he believes it was a false statement of fact that induced him to buy flights he otherwise wouldn't have purchased. Alternatively, he says it formed part of the contract, so V not providing checked baggage would amount to a breach of contract.

Mr L supplied screenshots and videos of the booking process. These show he selected an "Economy Super Lite" fare. On the fare's features list, there was a green tick next to "01 checked baggage (23kg) (\*)", suggesting checked baggage might be included, subject to whatever condition the asterisk refers to. A "view details" hyperlink on the bottom of this list led to a pop-up window giving more detail about what each fare-type included. And within this pop-up window, for the "economy super lite" fare, it states:

"-carry-on baggage: 1 carry-on baggage item (up to 10kg) and one accessory (2kg) (\*)  
-checked baggage: 1 piece (23kg) ..."

According to Mr L, this information led him to believe 23kg of checked baggage was already included.

I've carefully reviewed everything Mr L provided. I can understand why Mr L believed the fare included checked baggage. However, I don't think it's clear from the evidence alone that checked baggage was included, for the following reasons:

- The asterisk in the line "01 checked baggage (23kg)(\*)" indicates certain conditions apply. But there's no information about what these conditions are.

If Mr L's evidence captured the entire page, it might have clarified if checked baggage was included in this fare – or whether it only applied to certain flights.

- The pop-up window is similarly partially captured by the videos and screenshots.

It seems likely there was more information at the bottom that could have clarified whether checked baggage was included.

- The remaining parts of the booking process are unavailable. But these often include prominent messages about whether checked baggage is included.

If, for example, subsequent steps made it clear baggage wasn't included - I wouldn't think it reasonable for Mr L to ignore that information.

The last point is especially relevant to buying flights online, where explicit references to baggage allowances are often seen later in the process.

For example, there could have been an additional screen showing checked baggage wasn't included and allowing Mr L to add further bags. Or a final summary setting out what flights included checked baggage, as is often seen before completing flight purchases online.

If this information was clear, I don't think Mr L would be able to reasonably rely on just the earlier description, even if it suggested baggage was included. I say that because a clear message presented later that baggage wasn't included could reasonably be interpreted as having overridden the earlier impression.

Whether later descriptions override earlier ones depends on how a reasonable person would interpret all the information. The underlying issue here is I think it's probable there was later, relevant information, that could have been clear enough to clarify the earlier description of the baggage allowance, but unfortunately that information isn't available to review.

I acknowledge Mr L's point that he cannot be expected to supply everything possible to prove the flight was misdescribed. He says that if he were expected to do that, it would place an unfair burden on him to prove there was a misrepresentation or breach of contract.

I agree Mr L doesn't have to provide everything. However, he does have to provide enough to show that it's likely there was a breach of contract or misrepresentation. Gathering evidence can be burdensome – there have certainly been other situations where consumers have had to spend a substantial amount of time and money to sufficiently show a breach of contract or misrepresentation. However, it being difficult to gather evidence doesn't diminish the requirement that Mr L has to show a breach of contract or misrepresentation was likely. And in any case, I haven't seen anything to show Mr L was unable to take screenshots of other parts of the booking process. On balance, it appears he didn't think he needed to.

In summary, it's unclear if the asterisk, further notes from the pop-up window, or other steps in the booking process clarified that checked baggage wasn't included. Without seeing the whole booking process, I'm not satisfied Mr L's evidence alone is enough for me to conclude the relevant flight includes checked baggage. And so I don't think he's done enough here to establish either a misrepresentation or breach of contract by V.

It follows that I don't think AESEL acted unfairly by declining Mr L's section 75 CCA claim.

### Customer service

Mr L said AESEL mishandled his chargeback and section 75 CCA claims, causing him distress and inconvenience. As Mr L raised his dispute on around 10 March 2024, and by 17 May 2024 he had received outcomes to all his claims, it's this period I've focused on.

Regarding the chargeback claims, I can see there were multiple calls and correspondence between the parties, along with attempts by Mr L to have his dispute reviewed again. This

would have taken up a lot of Mr L's time. From what I've seen, the reason for this extra contact was largely a result of the usual inconvenience involved in processing chargebacks, AESEL requesting and reviewing further evidence, Mr L wanting AESEL to reconsider the claims outcomes, and AESEL's frontline staff acting as an intermediary between Mr L and AESEL's claims team, making it more difficult for Mr L to get his point across.

I've no doubt Mr L experienced some frustration progressing his chargeback claims. But the key consideration here is not whether Mr L was frustrated, but whether it's fair to hold AESEL responsible for it. I haven't seen anything that strikes me as an example of particularly poor service from AESEL. Chargeback claims by their very nature can take a while to resolve, and further clarifying or supporting information is often required – as I think it was here. That's not out of step with how these claims typically progress.

I accept Mr L was also frustrated because he couldn't speak directly to the claims team, sometimes resulting in him having to repeat his arguments. If he could have, it might have also resulted in the claims being resolved more quickly.

However, it's not for the Financial Ombudsman Service to tell firms how to organise their teams, as we are not the regulator. And whatever frustration Mr L suffered from having to relay his communication through frontline staff isn't something I'd consider disproportionate or unfairly onerous. Mr L was still able to present his case fully, his claims were considered thoroughly, and he received outcomes within a reasonable time. I also haven't seen anything else to suggest AESEL's service standards were so poor as to warrant compensation.

Similarly, I haven't found any examples of especially poor service from the way AESEL handled Mr L's section 75 CCA claim. The claim was dealt with quickly, and Mr L received a concise answer explaining AESEL didn't think there was enough evidence to support his claim. I appreciate it didn't go into the level of detail Mr L wanted. AESEL could have explained why it thought Mr L's screenshots and videos were insufficient – but I think it did enough to clarify its position and why it was declining Mr L's claim.

In summary, I think AESEL's customer service was adequate, and I don't find AESEL acted unfairly when discontinuing the chargebacks or declining Mr L's section 75 CCA claim.

### **My final decision**

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr L to accept or reject my decision before 6 May 2025.

Alex Watts  
**Ombudsman**