

The complaint

Mr T complains about the way American Express Services Europe Limited (AESEL) dealt with a claim he submitted relating to transactions on his charge card account. More specifically Mr T is unhappy that AESEL did not uphold his claim and provide a refund of the disputed amount.

What happened

Mr T has a charge card with AESEL and he used the card to pay for accommodation on an overseas trip. Mr T believes that he has not been charged the correct amounts by the accommodation and disputed the transactions with AESEL. AESEL investigated Mr T's concerns and raised a dispute with the merchants, who are the accommodation providers. The chargeback claims were defended by the merchants and the difference in the prices charged were, according to the merchants, because Mr T extended his originally planned stay. AESEL did not uphold Mr T's claim and explained this to him.

Mr T remained unhappy with this and he referred his complaint to our service, where it was considered by one of our investigators. They explained to Mr T how the chargeback process worked and that section 75 of the Consumer Credit Act does not apply in instances where a charge card has been used. The investigator did not consider AESEL failed to consider Mr T's claim reasonably and it was ultimately for this reason why they did not consider the complaint should be upheld.

Mr T remained unhappy with those findings and the complaint has now been referred to me as the last stage in our process.

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'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here. Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. I haven't. I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Also, the circumstances are of course well known to the parties involved in this complaint and I see no benefit therefore repeating them at length in this decision.

I have considered what Mr T has said about speaking and making representations directly to the deciding ombudsman. I note Mr T believes the investigator has been biased in their decision and is concerned about submitting information via the investigator. The fact that the outcome reached by the investigator was not in Mr T's favour does not simply mean that outcome is biased. Mr T says that he wishes to correspond directly with me *without*

interference or intermediary, as to make sure of its [the evidence] integrity remaining intact.

Mr T has been corresponding with the investigator and their manager and having considered the circumstances here, I am satisfied that Mr T has had sufficient opportunity to present his complaint along with any supporting evidence or arguments he wishes to make. I'm also satisfied that Mr T could have made any further submissions to the investigator or their manager, which would have been added to the file for me to consider. I do not consider it necessary for me to speak directly to Mr T before reaching my decision and I am satisfied Mr T and AESEL have both had more than sufficient time and opportunity to make any submissions they feel are relevant before I reach my final decision.

As the investigator has explained, the type of account/card that Mr T has with AESEL is a charge card, not a credit card. Section 75 of the Consumer Credit Act provides certain protections for credit cards and some loans. But it does not however apply to charge cards in the same way. I have considered what Mr T has referred to and why he believes section 75 would apply, but do not agree with what he has set out. I accept there are some similarities between a charge card and credit card, but one significant difference is that a charge card requires any balance to be paid in full each month. Whereas a credit card will typically allow the balance to be repaid over a period of time, usually attracting interest on any unpaid balance.

Only certain types of credit agreements fall with the specific requirements of section 75 Consumer Credit Act and I'm satisfied that the charge card Mr T has with AESEL does not meet the requirements of section 75. It is because of this that I do not consider AESEL acted unreasonably by not investigating Mr T's claim with section 75 as a relevant consideration.

AESEL did however raise a chargeback as this is something that applies to both credit cards and charge cards. But unlike section 75, the chargeback scheme is a voluntary one. It's a process by which transaction disputes are resolved between card issuers and merchants under the relevant card scheme rules.

What this means is that AESEL can, in some circumstances, ask for a transaction(s) to be reversed if there's a problem with the goods or services supplied by the merchant. But the chargeback doesn't give a consumer any legal rights and it isn't guaranteed to result in a refund. It depends on the evidence provided to support the chargeback and what the merchant says in response.

I'd consider it to be good practice for AESEL to raise a chargeback if it thinks there's a good chance of it being successful. In this case, I can see that AESEL has done so and it did receive a response from the merchant. Mr T believes he has been overcharged for accommodation and when responding to the chargeback the merchant explained that the difference in pricing was a result of Mr T altering his stay, staying longer and therefore being charged more.

I think it would be helpful to explain that Mr T's complaint against AESEL is about the way it handled his chargeback. AESEL does not step into the shoes of the merchant and unlike section 75, Mr T does not have a like claim against AESEL as he has against the merchant or supplier of the goods or service. When considering Mr T's complaint, I must therefore consider the actions of AESEL, not the merchant, and determine whether AESEL acted reasonably.

AESEL did raise a chargeback and this was defended by the merchant. The reason submitted by the merchant in the defence does not appear unreasonable and it is of course plausible that Mr T did in fact alter his original plans and as a result of this incur additional costs for extending his stay.

AESEL could have challenged this further through arbitration but it was under no obligation to do this in every chargeback that is defended by the merchant. I again note the reasons submitted by the merchant appear to be plausible and had AESEL sought arbitration, there appears to be no guarantee in the circumstances here that this would have been successful. Having considered the circumstances here I am not persuaded AESEL acted unreasonably or unfairly by not seeking arbitration.

I note Mr T has highlighted the merchant has referred to the wrong booking site where Mr T booked the accommodation, but this is not in my view sufficient reason to challenge the chargeback defence.

Mr T has forwarded our service a copy of an email with the merchant which he says shows the merchant admitting fault and its impossibility to refund the payment to the card used. The email chain does refer to a \$131.56 reimbursement and discusses the way in which the payment can or cannot be made. The email chain Mr T has supplied does not however demonstrate the merchant admitted fault, or that this reimbursement relates to the same issue Mr T raised with AESEL about being over charged accommodation.

The email also appears to be dated after AESEL processed the chargeback and I cannot see it was able to consider this at the time it was considering Mr T's claim. It is not in my view evidence that AESEL unfairly considered Mr T's chargeback claim.

Finally, I note that Mr T is unhappy that AESEL explained that it was unable to accept audio or video evidence, or therefore recordings of conversations Mr T says he obtained from the merchant. Ultimately it is for AESEL to decide what types or formats of evidence it is willing or able to accept when determining a chargeback. I accept evidence can come in different forms and it might in some cases be helpful to be able to consider recordings of conversations.

Mr T has referred to recordings and transcripts of calls and although AESEL was unable to accept them, Mr T was given the opportunity to submit those recordings to our service during our investigation. These have not however been received and cannot therefore be considered.

I fully appreciate that Mr T is likely to remain unhappy with the conclusions I have set out above but having considered the circumstances here, I am not persuaded AESEL acted unreasonably by declining Mr T's chargeback claim.

My final decision

My final decision is that I don't uphold the complaint. For the reasons I've explained, I don't think AESEL acted unreasonably when it rejected the chargeback claim.

This final decision is the last stage in our process and should Mr T wish to continue his dispute with AESEL or the merchant, he will need to do so through alternative means.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 15 April 2025.

Mark Hollands
Ombudsman