DRN-5074343

The complaint

Mr K complains that American Express Services Europe Limited (AESEL) hasn't refunded a payment he made using his credit card.

What happened

In June 2021, Mr K paid £4,997 using his AESEL credit card to a training course provider. Mr K purchased a mentoring and training programme designed to help him with setting up a property business.

The course was advertised as a three month programme which included: An online one to one coaching session and a further face to face coaching session, 2 full days of classroom training (this was later amended to 3 online masterclasses and a recording of these would be provided afterwards), 6 webinars and several property text books. It also included access to a 'community of creative investors', regular 'deal clinics', help with a business plan, legal support and access and support from two specific experts.

The course started in July 2021. In March 2022, Mr K complained to the course provider to say that the course had not lived up to its promises. In summary, he said:

- One of the two experts had dropped out before the course started meaning support was harder to come by.
- No recordings were made available of the final two masterclass sessions.
- One of his promised one to one sessions had not been delivered.
- The biggest draw to sign up to the course was the prospect of a promised 'deal analyser tool' (the 'deal clinics') where a mentor would provide support and advice on prospective property deals within 48 hours, but this had not been delivered.

The course provider responded to say it accepted that the course 'did not get off to a great start'. It agreed that one of the experts had pulled out of the course and the deal analyser did not meet the promises made. However, it said that the missing one to one would be re-arranged.

Mr K made a further complaint to the course provider to say that while he had now had a further one to one with the expert, many key elements of the course hadn't been provided as promised.

In July 2022, the course provider offered the following as a resolution to Mr K's complaint:

- Access to four additional online training modules
- 12 months of one to one coaching sessions (one per month) with the expert
- A check in call at six months.

Mr K accepted this offer to put things right on the basis that he could get assurances that the coaching sessions would happen as agreed. He said the expert had previously been unable to stick to agreed timeframes. The expert contacted Mr K in August 2022 and gave him assurances about how the coaching sessions would operate, starting from September 2022.

Mr K responded to say he would prefer to start the sessions in October as he couldn't commit the time until then. It appears no further contact was made until 3 November 2022, when the expert contacted Mr K and asked when he would like the sessions to begin. Mr K said he wasn't prepared to go ahead as he was unhappy with the delayed communications.

In January 2023, Mr K made a further complaint to the course provider asking for a refund as the further coaching sessions had not happened and he had not received what he had paid for. When Mr K didn't receive a satisfactory response, he contacted AESEL to seek a refund.

AESEL attempted a chargeback, but said the chargeback had been made outside of the relevant time limits. It then considered the claim under section 75 of the Consumer Credit Act 1974 ("section 75"). It said it didn't think Mr K could make a claim against AESEL because the required debtor-creditor-supplier agreement wasn't in place.

I sent Mr K and AESEL my provisional decision on 6 September 2024. I explained why I thought the complaint should be upheld. I said:

> *The general effect of section 75 is that if Mr K has a claim for breach of contract or misrepresentation against the course provider, he can bring a like claim against the provider of credit (in this case, AESEL). However, there are certain other requirements that also need to be satisfied – such as, there needs to be a debtor-creditor-supplier ("DCA") agreement.*
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> *AESEL in its final response letter to Mr K said that the required DCA agreement wasn't in place. This was because a third party business acting as a 'payment aggregator' processed the payment and the payment didn't go directly to the course provider. In its submissions to our service AESEL has accepted that our service does not take the same view in similar circumstances which involve this third party 'payment aggregator'. However, it said that even if there were a DCA agreement in place, it didn't believe there was evidence of a breach of contract by the course supplier.*
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> *For completeness, I'm satisfied that the requirements for a section 75 claim are met as I don't consider the involvement of the third party payment aggregator to interfere with the DCA agreement in this specific case. As AESEL appears to accept this is this service's position I don't propose to go into further detail as to why in this decision as it isn't in dispute. I've therefore gone onto consider whether I think there's been a breach of contract by the course provider and whether that means it would be fair and reasonable for AESEL to put things right.*
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> *In communications between the course provider and AESEL, I've seen that the course provider accepted that it had only provided Mr K with around 80% of the original course content. Further, in emails the course provider sent to Mr K it also accepted that the course had not been provided as expected. So, I'm satisfied that Mr K didn't receive everything he paid for. It's clear that recordings of two of the three masterclasses were not made available and the 'deal clinic' or 'deal analyser' element of the course was not delivered in the manner that had been agreed. Further, only one expert (rather than two) was available for support and mentoring, limiting their availability and speed of responses.*
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> *As Mr K wasn't provided with everything that was agreed under the contract with the course provider, I'm satisfied there was a breach of contract. I note that the course provider then agreed, as a remedy for this breach of contract, to provide Mr K with access to additional training material and 12 monthly one to one coaching sessions with the expert. However, it seems these coaching sessions have so far not been*

delivered. It isn't clear whether the additional training material was made available or not but the course provider's response to AESEL suggested Mr K may not have accessed them as it said at the time these (as well as the coaching) was still available to him.

On the face of it, it appears the course provider's proposed remedy was a reasonable way to put right the breach of contract. However, I've since found that the course provider is now in administration and went into administration before the 12 monthly one to ones would have been completed even if they had started when originally agreed. So, it doesn't appear for it to be possible for Mr K to receive the remedy proposed by the course provider and he has therefore been left in a position where he has not received (and won't ever receive) everything he paid for. For this reason, I think its fair and reasonable for AESEL to put things right.

Mr K says that he would not have gone ahead with the course had he known it wouldn't have delivered everything that had been promised. I accept that's possible, but I also can't ignore that he has received a significant proportion of the promised training. On that basis I don't consider a full refund to be fair or reasonable.

Mr K has said he hasn't benefitted from the course as the key benefits were from the elements that were not delivered. However, I'm not persuaded that's the case. In his initial complaint to the course provider in March 2022, Mr K stated that he had benefitted from parts of the course, and clearly he did have access to a significant amount of the content.

The course provider said to AESEL that it had delivered 80% of the original promised course content. From everything I've seen, I don't think that is a wholly unreasonable estimate of what was delivered. However, I do think what Mr K received was likely to be less than this in practice. I say this because in stating it delivered 80% of the promised content, it was suggesting that the 'deal analyser' element was provided. From the emails exchanged between Mr K and the course provider its clear this facility was provided, but the course provider accepted it did not meet pre-agreed response times to make the facility sufficiently useful.

It's not possible for me to place specific values to each individual element of the course as it was sold as one whole package. I accept Mr K will have his own views as to which elements he believes were more valuable. However, I'm mindful that what might have been more valuable in terms of a learning experience to Mr K's personal circumstances doesn't necessarily equal what was in practice the largest or most valuable element of the course in terms of cost.

Taking everything into consideration, I think its fair and reasonable to conclude that Mr K only received around 70% of the agreed course content to the standard that would be expected (taking into account all the relevant circumstances of the contract). For this reason, I think it would be fair and reasonable for AESEL to refund Mr K thirty percent of what he paid for the course, representing a refund of the elements he didn't receive.

AESEL accepted my provisional decision, but Mr K didn't. In summary, he said:

- He considers only around 50% of the course material was received by him, not the 70% stated in the provisional decision. He provided a breakdown of estimated costs for each part of the course with an estimate of what percentage he received of these individual items. He said the total value of the promised training material was estimated to be £16,297 and he had received only around 50.05% of this (to a value

of £8,157).

- He stated that even these estimates were generous in favour of the course provider.
- He said there had been a cost to his mental wellbeing and compensation for this had not been factored in.
- He considered that interest should also be awarded on the refund given that he had been paying around 24% interest on his credit card since 2021 when he made the transaction. He asked for interest to be paid on the refund at the same rate he'd been charged on his credit card and this should be calculated from the date he made the payment to the course provider.

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 thought very carefully about the additional comments Mr K has made and I can understand his strength of feeling about what he did and didn't receive from the course provider. However, I find his method of calculating the loss problematic. Mr K paid less than £5,000 for the entire course and his calculations suggest that he received over £8,000 in value for that outlay. Clearly, he did not receive everything he paid for, but using his methodology would result in me having difficulty in concluding that he has lost out financially.

Further, in order to support his claim for only receiving around 50% of the promised course content, Mr K's calculations make assumptions about the value of the different elements which can't be verified in any meaningful way, and it is these values he uses to calculate the percentage of the course he received. I note he's also said that he only received two of three promised one to ones but there appears to be some dispute concerning that. Having reviewed the available evidence, I haven't seen anything to persuade me that the 30% refund I set out in my provisional decision ought to change. I consider that to be a fair and reasonable way for AESEL to put things right.

Mr K has also said that interest ought to be paid on the refunded amount. I agree this is reasonable, but not in the manner Mr K has set out. Mr K's loss only arose from the point at which there was a breach of contract and where he ought to have received his money back. Up until that point, Mr K was rightfully paying for a service he had agreed to pay for.

While there was a breach of contract by the course provider originally, I'm satisfied it offered a suitable remedy to that breach – which was accepted by Mr K at the time. While Mr K later changed his mind about accepting it, it appears the remedy was still available to him and in my view was reasonable to remedy the breach. It wasn't until the course provider ceased to trade that Mr K could no longer obtain that remedy. As he then made a like claim against AESEL under section 75, I think it's fair and reasonable to conclude that Mr K ought to have rightly received a proportionate refund (in lieu of the previously agreed remedy) when AESEL finalised its consideration of his claim.

As AESEL didn't agree to refund Mr K at this point, I consider it acted unfairly and unreasonably by withholding funds Mr K ought to have been entitled to. For that reason, AESEL should pay 8% simple interest per year on the refunded amount from the date it declined his section 75 claim to the date of settlement.

I consider 8% simple interest to be a fairer remedy as this is in line with what the Court might award where funds were owed. I can understand why Mr K might feel a refund at 24% (or whatever rate was charged on his credit card) would be fair. However, I don't think AESEL were required to refund him until September 2023 (when it turned down his claim). This was significantly later than the original end date of the course Mr K entered into, so I consider he

would always have had to have paid some interest for the purchase. Further, as he paid using a revolving credit facility like a credit card (rather than a fixed sum loan agreement with a set duration and payment schedule) it would be unfair in the specific circumstances of this case to hold AESEL liable for interest charges which could vary significantly depending on how quickly or how much Mr K chose to repay.

Lastly, Mr K says that compensation for his mental wellbeing hasn't been taken into consideration. However, I consider the crux of Mr K's issues to stem from the course provider's actions, not AESEL's (although I agree it ought to have refunded him in September 2023). I don't consider it fair and reasonable to make any further direction for any distress and inconvenience that might have been caused by the course provider as this isn't something I could reasonably say AESEL were liable for under section 75. Further, I'm satisfied that the interest refund adequately compensates Mr K for AESEL's delay in upholding his section 75 claim.

My final decision

For the reasons given above, I uphold this complaint and direct American Express Services Europe Limited to:

- Refund £1,499.10 representing a 30% price reduction on the total amount Mr K paid for the course. AESEL should add 8% simple interest per year to that refund from the date it declined the section 75 claim in September 2023 to the date of settlement.

If AESEL considers tax should be deducted from the interest element of my award it should provide Mr K with a certificate showing how much it has taken off, so that he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 12 December 2024.

Tero Hiltunen
Ombudsman