

## **The complaint**

Mr B has complained about the way American Express Services Europe Limited (AESEL) dealt with his request for a refund for a holiday he booked using his AESEL credit card. He has complained the holiday was misrepresented and there was a breach of contract as he didn't get the services he paid for.

## **What happened**

Mr B booked a holiday for himself and his family using an online booking platform I'll call "L" for a stay towards the end of October 2023. Mr B paid L for the packaged holiday consisting of flights and a hotel for a total of £4,747.43.

Once Mr B and his family arrived at the hotel, they were told that the main pool facilities including kids' pool facilities were closed for maintenance for the duration of their stay. Mr B complained to the hotel and was informed it had told L that maintenance work would be carried out from early October 2023 and was likely going to take 28 days. The hotel told L that guests can use the secondary hotel swimming pool which was a walk away or by requesting a buggy from the main lobby entrance. Mr B was able to use these facilities but was unhappy this pool was busy, and he was unable to use loungers freely. Mr B says he complained to the hotel, and it offered to refund Mr B 20% of the hotel costs. But he was unhappy with this, so he complained to L and it offered and paid Mr B £273.28 to reflect 15% of the hotel costs.

Mr B remained unhappy and explained he felt the holiday was misrepresented and explained the main pool and kids' pool activities were one of the key reasons he decided to book this particular hotel. He said if he was informed of the pool closures, he would have changed the hotel destination. And because these weren't available, the holiday wasn't as enjoyable, and he had out of pocket expenses, including transport costs and costs for recreational activities. He raised a claim under Section 75 of the Consumer Credit Act 1974 ('Section 75') with his credit provider AESEL. He completed a form on 29 January 2024 to do so.

AESEL considered the claim and agreed L didn't inform Mr B of the changes to the facilities available in line with the Package Travel and Linked Travel Arrangements Regulations 2018 (PTRs). It agreed there was a breach of contract and offered to reimburse Mr B an additional 25% of the hotel costs equating to £455.47 in addition to the £273.28 paid by L. Mr B rejected this offer and made a complaint about the way the claim was handled as he was unhappy with the offer AESEL made and wanted it to pay him compensation of £5,000. AESEL thought it handled the claim correctly, so it didn't uphold his complaint and as Mr B rejected its offer, it confirmed to our service, it wouldn't pay what it had offered to settle his Section 75 claim.

Our investigator assessed the complaint and found that AESEL was unlikely to be able to raise a chargeback under the scheme as Mr B stayed for the duration of the booking and was offered a partial refund and alternative pool facilities by the hotel for the lack of services. She also considered the offer AESEL made under Section 75 for the breach of contract and felt it was fair.

Mr B disagreed and explained he felt strongly that the refunds offered didn't sufficiently compensate him and his family for the additional stress and loss of enjoyment the issues caused. So, Mr B asked for an ombudsman to review his complaint.

I issued a provisional decision that said:

### **Section 75**

*Under Section 75, AESEL is jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is L in this case. As L organised the holiday, I'm satisfied it is responsible for the performance of the contract and any breach of contract or misrepresentation of it under the PTRs. In order for there to be a valid claim under Section 75, there needed to be a debtor-creditor-supplier ('DCS') agreement in place and the financial limits have been met for a valid claim. I'm satisfied the criteria has been met.*

*It's clear Mr B feels strongly about this matter, and I mean no discourtesy where I haven't commented on each individual point Mr B has raised. I've focused on what I consider the key elements of the complaint. I have to look at AESEL as the finance provider and the actions it took in considering Mr B's Section 75 claim.*

*It's clear the hotel was unable to provide all of the services for Mr B's holiday. It has said that the main pool and kids' pool facilities were unavailable during Mr B's stay. I can understand why Mr B thought the holiday was misrepresented because he says he booked the holiday on the basis he was expecting to be able to use the swimming facilities that he saw when he made the booking and he wasn't able to do so. Moreover, it's not in dispute there was a breach of contract. I've gone on to consider what the fair remedy is to put things right.*

*I've considered Mr B was able to utilise the flights for the holiday booking and had use of other facilities at the hotel during his stay. I understand Mr B didn't want the upheaval of requesting alternative accommodation due to the length of his stay, and he decided to stay at the hotel. But I do have to bear in mind that, the impact may have been lessened if he'd taken those steps. This is something I can't say for sure would have happened. However, he's had the benefit of the flights and overall accommodation including the alternative pool offered, so I don't think a full refund is fair in the circumstances. Instead, I'm persuaded that a fair remedy would be a price reduction in line with the PTRs. Mr B has already been paid £273.28 by L and AESEL offered £455.47, these combined reflects 40% of the hotel cost.*

*On balance, while there's no exact science, in addition to the refund from L, I think the refund of £455.47 Mr B was offered is fair and I'm not going to ask AESEL to refund Mr B anymore, but it should pay the amount it originally offered in resolution of his complaint.*

*I've also considered that Mr B referred to out of pocket expenses and I can see he provided information by way of transactions on his statements for travel costs and activities and meals outside of the hotel. When considering costs for consequential losses I need to think about whether or not these were a direct result of the breach and if the hotel tried to mitigate these losses. I've also thought about whether the costs were reasonably foreseeable, or too remote; and whether there's sufficient evidence of the actual losses. I appreciate that Mr B and his family were looking forward to the holiday and wanted to ensure they had an enjoyable experience, however it's difficult for me to conclude these transactions reflect activities Mr B did as a result of the pool facilities being unavailable. I don't think based on the evidence provided that I can ask AESEL to pay these as a consequential loss of the breach of contract which happened.*

### **Chargeback**

*In certain circumstances a card issuer is able to raise a chargeback dispute under the relevant scheme rules. This is where the cardholder has a dispute with the merchant, but this is subject to strict rules and there is no guarantee that the card issuer will be able to recover the disputed amount.*

*In this case I can't see that AESEL raised a chargeback. This is likely due to Mr B raising a claim under Section 75 with AESEL and where it agreed there had been a breach of contract, so I don't think it's unreasonable that AESEL considered this claim under Section 75 rather than raising a chargeback. I've thought about whether Mr B would have had any different recourse under the provisions of a chargeback claim, however as Mr B would have been claiming under rules relating to services not received or defective, I don't think he would have been in a better position if a chargeback claim had been raised.*

AESEL responded to accept the provisional decision. Mr B responded saying that he didn't expect to receive the full compensation of around £5,000 but he wanted more than what AESEL had offered. And this would help towards a future holiday.

### **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.

Thank you to both parties for their responses. I've noted Mr B's comments and I appreciate the holiday wasn't as he expected. However, I haven't been provided anything to show AESEL acted unfairly in the way that it handled Mr B's dispute. It considered a claim under Section 75 and agreed there was a breach of contract. It offered to refund Mr B £455.47, which in addition to the refund provided by L reflects 40% of the hotel costs. There's no exact science when considering the refund amount, however in the circumstances I think it is fair. Mr B hasn't provided any further evidence why a higher amount would be fairer.

Because of this I don't think AESEL needs to do anything more than what it originally offered to do to resolve the claim under Section 75.

### **My final decision**

My final decision is that I uphold this complaint and direct American Express Services Europe Limited to pay Mr B £455.47.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 November 2024.

Amina Rashid  
**Ombudsman**