

## The complaint

Mr H complains about the outcome of a claim he made to American Express Services Europe Limited (AESEL) for a package holiday.

## What happened

The background of this complaint is well-known to both parties. So, I don't propose to go into detail about this. I will though summarise the key parts.

Mr H and his wife booked a package holiday with a company I'll call 'IC' in November 2022. The cost of the holiday was £17,248 and Mr H paid for this using his AESEL credit card. The package comprised of flights to Australia from the UK on 3 February 2023, internal flights in Australia, return flights to the UK on 27 February 2023, a train excursion, hotel stays and a cruise for 13 nights. The cruise was originally scheduled as follows:

Date		Arrive	Depart	Port
Tue	4 Feb 2023		~ 8:00	Melbourne
Wed	5 Feb 2023			At Sea
Thu	6 Feb 2023			At Sea
Fri	7 Feb 2023	08:00	~ 8:00	Fiordland National Park
Sat	8 Feb 2023	09:00	~ 8:00	Dunedin
Sun	9 Feb 2023	08:00	~ 8:00	Christchurch (Tours From Lyttelton)
Mon	20 Feb 2023	08:00	~ 8:00	Wellington
Tue	21 Feb 2023			At Sea
Wed	22 Feb 2023	07:00	20:00	Auckland
Thu	23 Feb 2023	08:00	~ 8:00	Bay of Islands
Fri	24 Feb 2023			At Sea
Sat	25 Feb 2023			At Sea
Sun	26 Feb 2023			At Sea
Mon	27 Feb 2023	07:00		Melbourne

Mr H says he'd previously read articles about some cruise ships being refused entry into New Zealand waters because of changes in rules on biodiversity. He also says some friends of his who were on the same cruise asked IC about these issues prior to the trip and whether the ship would be allowed into New Zealand. IC e-mailed back to say the ship had been cleaned to the appropriate standards and that there were no planned changes to the itinerary. Mr H says that he and his wife were reassured that the holiday would go ahead as planned.

However, while they were in Melbourne, Mr H saw an e-mail from IC on 13 February 2023 in the late afternoon saying that the cruise to New Zealand had been cancelled and replaced by east coast Australia destinations. This was because the ship didn't comply with New Zealand bio-diversity regulations.

The amended itinerary was as follows:

14 Feb - Melbourne  
 15 Feb - At Sea  
 16 Feb - Eden  
 17 Feb - At Sea  
 18 Feb - Brisbane  
 19 Feb - At Sea  
 20 Feb - Port Douglas (cancelled - At Sea)  
 21 Feb - Cairns  
 22 Feb - At Sea  
 23 Feb - At Sea  
 24 Feb - At Sea  
 25 Feb - Sydney  
 26 Feb - At Sea  
 27 Feb - Melbourne

Mr H says that IC offered to fly them home, but their telephone helpline was constantly engaged and there were no reps around to help. He also says they had no mobile

connectivity or internet outside of their hotel and felt they had no choice but to board the ship despite having serious misgivings and feeling vulnerable.

IC confirmed that if Mr H and his wife wanted to continue with the cruise, each cabin would be credited with \$300, a refund of \$1,300 and a £500 voucher off any future package booked through them.

Mr H and his wife asked to disembark in Sydney rather than continuing to Melbourne and IC arranged for a two-night hotel stay there. When Mr H and his wife tried to check in for their return flights home, they were told their seats were no longer available. Their return to the UK was delayed as a result by a day.

When Mr H and his wife arrived back home, they received a call from IC offering a one-off payment of \$1,300 compensation. Mr H didn't feel this was adequate and complained to them about his experience. Mr H didn't receive any further offers of compensation from IC and so asked AESEL for help in reclaiming the full amount he'd paid for the holiday.

AESEL considered Mr H's claim under Section 75 of the Consumer Credit Act 1974 ("s75"). They offered him £300 for the loss of enjoyment he'd experienced in being unable to fly home on the expected date. But they didn't agree that IC had breached their contract because they had always intended to stick to the original itinerary, and this was only changed because the ship couldn't be cleaned due to unforeseen circumstances with the weather. AESEL also said that IC had complied with the relevant part of the Package Travel Regulations ("PTR") by offering the option of accepting a substitute package, which was offered at a reduced price, or the option of cancelling the cruise and receiving a full refund. And Mr H had accepted the substitute package and decided to continue with the cruise.

Mr H didn't agree and referred his complaint to our service. Our investigator agreed with AESEL's position and didn't recommend that the complaint should be upheld. Mr H was unhappy with this and so his complaint was passed to me for a decision.

I issued my provisional decision on 24 January 2025, relevant extracts of which I include below, which forms part of my final decision.

*'I'm looking here at the actions of AESEL and whether they have acted fairly and reasonably in the way it handled Mr H's requests for help in getting his money back. This will take into account the circumstances of the trip and how IC has acted, but there are also other considerations, such as their own obligations under relevant law and legislation.*

*There are two main ways a bank can help a customer to recover money paid to a supplier who hasn't provided what was promised. It can try to recover the money from the supplier through a process known as chargeback. Or it can assess whether its customer has a valid claim under s75.*

*Here, it doesn't appear that AESEL attempted a chargeback and instead considered the claim under s75. This provides that, subject to certain criteria, the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services. I'm satisfied that all the necessary criteria for Mr H to make a s75 claim was met.*

*Mr H's trip fell within the definition of a package under the PTR as it involved the combination by IC of transport and accommodation services. The PTR imply certain terms in travel contracts where different travel services are combined in a particular way by an organiser. Generally, the legislation deals with:*

- *The liability of an organiser to a traveller in certain situations and the specific remedies available to the traveller in the event of a lack of conformity with the contract by the organiser.*
- *Protection against the insolvency of package organisers, ensuring travellers are refunded, or where applicable, repatriated should the organiser go bust.*
- *Detailed information requirements that make it clear what product the traveller is buying and the associated protections.*

*Mr H was entitled to travel under the package contract so he met the necessary definition of the category of person that could rely on the provisions on the PTR. It's likely therefore that the PTR would have some relevance in answering whether there was a breach of contract by IC.*

*Part of the agreement with IC was for it to provide a cruise for 13 nights, stopping at various destinations in Australia and New Zealand. Mr H has said that the main reason he and his wife agreed to the itinerary was so they could visit New Zealand, to areas that I understand to be of natural, outstanding beauty. I have no reason to doubt Mr H on this, and he's been consistent about this throughout the dispute. So, I can well imagine how disappointed and upset he was when he found out that this wasn't happening.*

*I've not seen a copy of IC's full terms and conditions relating to the package. I note though that the terms and conditions set out on their website says:*

*'If we become unable to provide a significant proportion of your package arrangements after you have departed, we will try to offer you suitable alternative arrangements of, where possible, equivalent or higher quality than those specified in the contract. If the alternative arrangements we make are of a lower quality than those you originally booked, we will make a price reduction'.*

*I think it more likely than not that these terms were in place in respect of the package (and AESEL are welcome to provide evidence to the contrary if they wish).*

*It seems to me that IC's terms mirror somewhat the PTR insofar as the PTR implied terms in the contract that where a significant part of the package couldn't be performed and a suitable alternative couldn't be offered, the traveller was entitled to an appropriate price reduction. It also seems to me that IC accepted that a significant portion of the package wasn't provided because they offered a price reduction of half the cost of the cruise. But, even if I am wrong about that (and again AESEL are welcome to explain why if they think I'm wrong) and noting that defining what is likely to be 'significant' is quite open to interpretation, there are other important points to consider in my view.*

*As I've mentioned above, the main reason why Mr H and his wife agreed to go on the cruise was to visit New Zealand. That couldn't then be provided, and they had already been previously reassured, via the e-mail from IC to Mr H's friend, that the ship had been cleaned and therefore compliant with New Zealand's bio-diversity rules. That wasn't correct, and I've seen specific e-mail exchanges between the cruise ship operator and the relevant department in the New Zealand authorities that shows that agreement hadn't been given on visiting New Zealand as per the itinerary because the ship hadn't yet been cleaned (and in fact a revised itinerary had been provisionally agreed before Mr H and his wife left the UK).*

*So, the position on this appears to have been misrepresented by IC before Mr H went on the trip. I accept that IC had no particular reason to doubt that the ship was suitably compliant, and it was only a day or two before the portion of the New Zealand section of the cruise was due to start, that the cruise ship operator confirmed they couldn't complete this because of*

adverse weather. But IC had given a clear representation that the ship had been cleaned appropriately when it hadn't.

I think it's also relevant to point out that, although it was the cruise ship operator that was in contact with the New Zealand authorities about the condition of the ship, the PTR sets out at section 15 that the 'organiser' which here was IC:

*'is liable to the traveller for the performance of the travel services included in the package travel contract irrespective of whether those services are to be performed by the organiser or by other travel service providers'.*

So, IC were imputed to have the same knowledge as the cruise ship operator did about what they knew of this problem and the change to the itinerary before Mr H and his wife left the UK.

Having considered all the evidence, and taking into account Mr H's plausible and persuasive assertions that the primary reason for going on the trip was to visit New Zealand, I think on balance that there was a significant change to the cruise which means a price reduction is appropriate here.

I realise that IC made an offer on the day before the cruise began, but I can well understand why Mr H felt he and his wife had no choice but to continue bearing in mind they weren't able to talk this through with anyone with IC before making that decision. So, I don't agree that Mr H and his wife accepted a suitable alternative in the sense that they were happy to do so. It was more likely borne out of making a rather hasty decision there and then without being allowed time to give it some thought.

I note that Mr H has asked for a full refund of the cost of the trip. I don't think that's proportionate in the circumstances irrespective of what the PTR might say on this point. He and his wife were able to enjoy time on the ship, which was I gather a luxury one. And they visited parts of Australia, stayed in hotels, and went on the train trip. They were also put up in a hotel for two nights in Sydney which wasn't part of the original itinerary, although I accept that did come about because of the problems with the cruise. Nevertheless, these particular elements didn't come without value in my view.

Determining what is a fair price reduction isn't straightforward as none of the individual elements of the trip (including the cruise element) has been itemised in the contract. With that in mind, and considering the overall circumstances, I consider a fair price reduction to be 20% of the overall cost of the trip (£17,248) which equates to £3,449.60.

I also think that Mr H was put to significant inconvenience overall as a result of what happened and also suffered the loss of enjoyment of a cruise that clearly didn't deliver what it promised and problems with the flights home. AESEL has offered Mr H £300 for the latter which I think is fair. As for the cruise, I currently think a payment of £750 is a fair figure.

So, my provisional decision is that I uphold this complaint for the reasons I've given above. I don't think that AESEL's response to the complaint Mr H made about the outcome of the s75 claim was fair. I currently intend on directing AESEL to award Mr H £3,449.50 for a price reduction of the trip, and for them to add interest on that sum at 8% simple each year from when they first declined to meet his claim for IC's breach of contract and misrepresentation on 27 October 2023. I also currently intend to direct AESEL to pay Mr H a total of £1,050 for the distress, inconvenience and loss of enjoyment he suffered'.

I asked Mr H and AESEL to send me any further comments or evidence they wanted me to consider.

AESEL accepted my provisional decision.

Mr H responded saying that IC should have told him about the issues with the ship entering New Zealand before they agreed to the trip and should have offered him the option to cancel and receive a full refund, as set out in their terms and conditions. Mr H says he would have cancelled the holiday had he been given this information, and that there had been a significant change which IC knew about before the trip started. And Mr H referred me to a similar case we had looked for another person who had been on the same trip.

### **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'd like to thank Mr H and AESEL for their comments on my provisional decision.

I've considered what Mr H has said and do agree with much of it. I agree that IC should have told him about issues with the New Zealand portion of the trip and that there had been a significant change to the trip because of those issues. And, as Mr H points out, IC's terms and conditions (a copy of which he has sent to me), sets out at point eight that customers have the option of cancelling and receiving a full refund in such circumstances.

However, if I were to direct AESEL to refund the entire cost of the trip, then Mr H would be paying nothing for those parts of the holiday that he did go on. I can't see how that could be a fair option. My remit is to consider what is fair and reasonable in the circumstances of the complaint. And, bearing in mind that Mr H did go on the holiday, the cost of which included flights, a train trip, visits to parts of Australia and the amenities provided on the cruise ship, all of which had some value, I don't think it reasonable that Mr H essentially pays nothing overall for this.

I note what Mr H has said about a previous case that we've considered here. I appreciate that case may have shared many of the same considerations and circumstances as his case. However, that case was dealt with on its own merits and was resolved informally without the need for an ombudsman's decision. I'm satisfied that my proposed resolution of a price reduction and compensation remains a fair way to settle this complaint, for the reasons I've given in my provisional decision and in my final decision.

### **Putting things right**

Considering the overall circumstances, I consider that Mr H is entitled to a price reduction of the cost he paid for the holiday. I consider a fair price reduction to be 20% of the overall cost of the trip (£17,248) which equates to £3,449.60.

Mr H was put to significant inconvenience overall because of what happened and suffered the loss of enjoyment of both a cruise that didn't deliver what it promised and with the flights home. AESEL has offered Mr H £300 for the latter which I think is fair. As for the cruise, I think a payment of £750 is a fair figure.

### **My final decision**

I uphold this complaint and direct American Express Services Europe Limited (AESEL) to:

- pay Mr H £3,449.50 for a price reduction of the trip, and to add interest on that sum at 8% simple each year from when they first declined to meet his claim for IC's

breach of contract and misrepresentation on 27 October 2023, to the date of settlement.

- pay Mr H a total of £1,050 for the distress, inconvenience and loss of enjoyment he suffered.

If AESEL considers that they need to deduct tax from the interest element of my award, they should provide Mr H with a certificate of tax deduction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 7 March 2025.

Daniel Picken  
**Ombudsman**