

The complaint

Mr B complains that American Express Services Europe Limited (AESEL) didn't do enough to help him when he told it about a dispute he had with a merchant over airmiles purchased. The airmiles were paid for using his American Express Business Platinum charge card.

What happened

In April 2023 Mr B purchased one million airmiles from an online airmiles retailer I'll call "X". The total cost for the transaction was £10,418.18. Mr B initially contacted AESEL to say he hadn't received the airmiles purchased in December 2023 and he thought he had therefore been defrauded.

Due to an IT error AESEL wasn't able to raise a dispute until 15 January 2024. It offered Mr B £50 to recognise the delay caused. AESEL has said it attempted to contact Mr B to gather more information about the dispute once its IT issue was resolved in January 2024. However, it said it didn't receive a response to these letters and as such AESEL argued it did not have sufficient information to raise a chargeback, so it didn't raise one. Mr B disputes receiving letters requesting further information and has stated that he requested AESEL contact him by email.

AESEL has also said Mr B cannot raise a "like claim" under s.75 Consumer Credit Act 1974 as the purchase took place on a charge card which is excluded from making a claim of this nature.

Our investigator considered the complaint and I have summarised their findings. Initially the investigator thought that the complaint shouldn't be upheld. He thought that AESEL had requested the relevant information to pursue a chargeback. However, because this wasn't provided by Mr B, AESEL was unable to pursue the chargeback. In addition, the investigator agreed that because the purchase was on a charge card, Mr B didn't have the protection afforded by s.75 CCA (in raising a like claim against the creditor).

Mr B disagreed with the assessment. He made a number of points in response (which I will summarise below). Predominantly he argued that AESEL's delay in raising the dispute contributed to a chargeback not being raised. In addition, he said that he requested to only be contacted by email and didn't receive the letters sent. Furthermore, he argued that the letters didn't allow enough time to respond, so even if they had been received, he wouldn't be able to respond in time.

Our investigator considered the complaint again and agreed that Mr B wouldn't have had enough time to respond before the chargeback deadline. Mr B had provided some evidence that he was promised a refund from X so he would have had 120 days from this point to raise this chargeback (for credit not processed.) Looking at when the initial information request was sent (on 16 January 2024) this gave Mr B a very short window to reply and provide further information. He also concluded that AESEL could have mitigated the impact of the IT error by beginning the investigation into the dispute whilst this was being investigated.

In response to this assessment AESEL gathered further information from X. It provided copies of text messages between Mr B and X. These messages state that Mr B had received the airmiles purchased and had used some of them, providing a screen shot which showed he had 863,000 points remaining. There is also reference to a booking having been made using the airmiles. So AESEL argued that the chargeback was unlikely to succeed as X has provided evidence to suggest the airmiles were received and used in part. The investigator agreed with AESEL that in light of this evidence the chargeback for goods and services not received (which is the grounds Mr B initially raised) was unlikely to be successful. In addition, the investigator concluded that although there was an email chain stating a refund would be processed there was no details about how much would be refunded. Given there was evidence that some of the miles had been used, he thought it was unlikely that this would be a full refund. So he didn't uphold the complaint.

Mr B has made a number of points in response to this assessment and prior to this. I have summarised his main complaint points below.

- Mr B feels he has been the victim of fraud and AESEL and the ombudsman service have failed to take meaningful action to protect him as a consumer, particularly given his long-standing history with AESEL. He purchased the airmiles from X to use with a third-party airline. However, this was against the terms and conditions for the airline and this was not explained to him prior to purchase. So he feels his consumer rights have been violated as he's been sold an illegal product. He's cited a number of authorities for this including the Consumer Rights Act 2015.
- The merchant has a well-documented history of fraudulent behaviour as seen online on a number of platforms. Mr B has provided online articles about stolen airmiles and selling airmiles. In addition, he has provided online reviews about X. AESEL should therefore not base its decision solely on the information provided by X without taking into consideration the broader context of its fraudulent behaviour. In particular Mr B feels the text messages provided lack credibility and require proper verification of the authenticity before they can be considered reliable. Mr B has also subsequently argued that they have been manipulated to shift the blame on to him when things went wrong.
- Mr B has provided a number of reasons why he feels AESEL has taken too narrow an interpretation of s.75 CCA which does not align with the broader intent of the law. To support this Mr B has cited Financial Conduct Authority guidance, the Consumer Credit Act 1974 and purpose of it, case law and industry practice. Mr B argues that whilst charge cards require full payment each month, they still provide a form of short-term credit and as such this aligns them closely with a credit card for the purposes of s.75 CCA. In addition, at the time of taking out the charge card he was not informed that he didn't have the protection afforded by s.75 CCA.
- AESEL's delay in handling Mr B's chargeback should not be used to deny Mr B his rightful claim. Mr B was not given clear information about the chargeback deadlines so this shouldn't be used as a reason to deny his claim.
- AESEL's own policies on its reward program stipulates that points are not the property of the card holder and are not transferrable. Mr B therefore queries why it would support a merchant providing a service at odds with this.
- Due to the delay in sharing information with Mr B and the length of time the dispute has taken Mr B feels he should be awarded additional compensation for the distress and inconvenience this has caused. He's provided a reference for an unrelated

Financial Ombudsman Service decision where distress and inconvenience was awarded and feels this should act as a precedent.

- Mr B does not feel the ombudsman service is advocating for him.

I issued a provisional decision where I said the following:

Whilst I appreciate that this will be disappointing to Mr B, I don't intend to uphold this complaint.

I've read everything that the parties have said, but I'll concentrate my comments on what I think is relevant. If I don't comment on a specific point it's not because I've failed to consider it, but because I don't think I need to comment in order to reach a fair and reasonable outcome. And our rules allow me to do this. This reflects the nature of our service as a free and informal alternative to the courts.

In a dispute such as this there are two potential avenues AESEL could explore to recover the funds paid. Either through a chargeback or a s.75 CCA "like claim". I'll consider each in turn.

Chargeback

A chargeback is the process by which payment settlement disputes are resolved between card issuers and merchants, under the relevant card scheme rules. It allows customers to ask for a transaction to be refunded in a number of situations, some common examples being where goods or services aren't provided, where goods or services are defective, or where goods or services aren't as described.

There's no automatic right to a chargeback; the chargeback process doesn't give consumers legal rights; and chargeback is not a guaranteed method of getting a refund because chargebacks may be defended by the merchant. This is because the rules, set out by the card scheme lay down strict conditions which must be satisfied for a chargeback claim to succeed. If a financial business thinks that a claim won't be successful, it doesn't have to raise a chargeback.

- *Goods or services not provided*

Mr B purchased the airmiles in April 2023 and complained in December 2023 that the airmiles hadn't been provided. At this time the applicable reason code for AESEL would most likely have been goods or services not provided. For the avoidance of doubt, I appreciate that airmiles doesn't clearly fit into the definition of goods or services, but equally I can't see anything which expressly excludes digital content in the chargeback guidance I have available and AESEL hasn't argued this. Furthermore, AESEL did initially treat this as a goods or services not provided chargeback.

As both parties are aware there are strict time frames required in order to raise a chargeback. Under this ground it's 120 days from the transaction, when the airmiles were due to be delivered or when Mr B realised the airmiles weren't delivered. I think it's likely the timeframes under this chargeback reason had therefore expired before Mr B contacted AESEL (suggesting it's subsequent delay in raising the dispute and the issues around writing to Mr B for further information had no impact.)

However, even if I thought Mr B had contacted AESEL in time (and that it was AESEL's subsequent delays/actions which resulted in the Mr B being too late) I still don't think this chargeback ground had any reasonable prospect for success. I say this because the text messages between Mr B and X show Mr B sharing a screenshot of his remaining points balance in September 2023. This clearly evidences that Mr B was provided with the points purchased and was able to use a proportion of them.

Mr B has questioned the validity of these text messages based on his allegation that X is a fraudulent company who has scammed him out of his money. However, he hasn't provided any evidence which leads me to conclude the text messages have been falsified. Looking at the screenshots provided I can see they are from the same mobile telephone number that he has provided as part of his complaint. In addition, within the text message exchange Mr B shared a screenshot of his points account. This shows that it is a points account in his name. So on balance I think the text messages are persuasive and I haven't seen anything which makes me think it's more likely than not that these have been falsified or manipulated in anyway. So as there is clear evidence from X that the airmiles were provided, Mr B's chargeback under this ground was unlikely to be successful.

- *Credit not processed*

I have reviewed an email exchange between Mr B and X which Mr B has provided. I can see that Mr B requested a refund and on 28 September 2023 X confirms that it will do this, but it is subject to management approval. So Mr B could potentially have had another ground for chargeback. The time frames under this ground include 120 days from when the refund was promised. So when Mr B contacted AESEL in December 2023 he was still in time to make this claim. However, the dispute wasn't raised until mid-January (due to the IT error) and this then led to a very short window to gather the relevant information. So I think there has been a failing here on AESEL's part.

So I now need to consider what would have most likely happened if AESEL had progressed the chargeback when Mr B initially raised it. Therefore I need to consider if the chargeback had any real prospect of success. Looking at the information provided, I have an email chain between Mr B and X where a refund is agreed subject to management approval. However, I have no confirmation that this approval took place. Additionally, there are no details of how much will be refunded. I think this is key given Mr B had, in all likelihood, used some of the airmiles at this point. And there is no clear date as to when the potential refund would be paid. Furthermore, I note in a telephone conversation between Mr B and AESEL in February 2024 Mr B was told it would need full details of the refund including the amount promised and when this was due to be paid. However, unfortunately this information wasn't provided.

Under the applicable chargeback rules Mr B would have needed to provide details of the amount offered and when it was due to be paid in order to evidence this claim. As Mr B has been unable to do this, I don't think a chargeback under this reason would have had any real prospect of success.

So I don't think Mr B has lost out as a result of how AESEL has handled the chargeback claim, as I don't think he had a reasonable prospect of success in any event.

Section 75 CCA

When something goes wrong with goods or services and the payment was made, in part or whole, with certain types of credit, it might be possible to make a s.75 CCA claim. This section of the CCA says that in certain circumstances the borrower under the credit agreement can make a like claim against the credit provider, as they can against the supplier, if there's been a breach of contract or misrepresentation.

However, there are specific exclusions to s.75 CCA and various requirements which need to be met in order to be eligible to make a claim. AESEL has said that because this was a charge card Mr B doesn't have the protection offered under s.75 CCA to make a like claim. The investigator agreed that Mr B didn't have the protection offered under s.75 CCA and explained that this was because of balance of the charge card was required to be paid in full each month. I agree with the investigator. Due to how the charge card is required to be repaid (in full each month) it is exempt from the protections of s.75 CCA under s.75(3) CCA.

I appreciate this will be disappointing to Mr B and I want to assure him I have read all the arguments and evidence he's provided in relation to this matter. Mr B has argued that a charge card is a form of running credit and that it works in a way which is very similar to that of a traditional credit card. So he feels it should be afforded the protections of s.75 CCA. Mr B has also stressed the importance of the purpose of s.75 CCA in protecting consumers. I don't disagree with Mr B. A charge card is a form of credit card and the protections offered under s.75 CCA are important. However, as explained above, due to how the card is required to be repaid it is specifically excluded from the protection afforded by s.75 CCA in making a like claim. I therefore cannot overlook this and I must therefore conclude that Mr B cannot raise a s.75 CCA claim. So I don't think AESEL treated Mr B unfairly by not considering a s.75 CCA claim for the purchase in question.

Mr B has said he wasn't informed, when he took out the charge card, that he didn't have protection under s.75 CCA. This was put to AESEL who has agreed that it's "highly likely" this wasn't explained to Mr B when he took out the charge card. There are a number of reasons why a particular type of credit does not fall under the protections of s.75 CCA and a number of criteria that need to be met even if the credit does fall under s.75 CCA in order to be eligible to claim. I don't think it's reasonable for AESEL to set this out to every consumer prior to any credit application and I've seen nothing to suggest Mr B specifically asked about this and was misinformed. Furthermore, I think if this was something that was of particular importance to Mr B (either in relation to taking out the charge card or in relation to the transaction in dispute) then he could have checked whether or not s.75 CCA applied before making the application and/or purchase.

Mr B has made a number of arguments in relation to his rights as a consumer, that he feels X has breached the contract and misrepresented the purchase to him. These are points which would be considered under a "like claim" under s.75 CCA. However as explained above, his charge card isn't covered by s.75 CCA so I can't consider them.

Mr B has argued that AESEL's terms and conditions for its reward points/ airmiles don't allow resale and aren't the property of the card holder. The subject matter of this complaint is about airmiles Mr B purchased from a third party; it is not in relation to AESEL's rewards/airmiles. So AESEL's reward terms and conditions have no bearing on the outcome of this complaint.

I appreciate Mr B feels that the ombudsman service has failed to advocate for him however this is not our role. Our rule is to impartially consider the complaint and reach a fair and reasonable outcome. We do not represent either party in a dispute. In addition, I note Mr B has argued that his loyalty as an AESEL customer should not be overlooked. This is something for AESEL to consider at its discretion, it doesn't impact on the complaint I need to consider. I have also noted Mr B's comments in relation to requesting compensation. As detailed above AESEL has already offered Mr B £50 to compensate him for the IT problem which led to a slight delay in logging his claim. I think this is fair compensation and I've not seen anything else which makes me think further compensation is warranted.

I asked both parties to provide me with anything further they wished for me to consider. AESEL didn't provide a response. Mr B provided copies of text messages between himself and X which give details of the refund including the amount and when this was confirmed.

I asked Mr B why he didn't provide this to AESEL and he said he did provide it. He said he sent this information via the post after his telephone conversation with it and can only assume AESEL lost or misplaced this information. He's asked that AESEL now process the chargeback using this information.

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 do appreciate this will be disappointing for Mr B, but having considered all the information afresh I'm afraid I still can't uphold this complaint. As set out in my provisional decision there are three potential avenues which AESEL could have explored to recover the funds Mr B has paid.

Chargeback – goods and services not provided

As explained in my provisional decision, I think Mr B raised this too late under the chargeback rules. However, even if I thought some of the delays were down to AESEL's handling of the chargeback, I still don't think Mr B would have had a reasonable prospect of success. I say this because Mr B was arguing that the airmiles weren't provided, however AESEL reached out to X and X provided evidence which suggested some of the miles had been used by Mr B. So on balance, even if this chargeback had been raised with AESEL in time, I think it's likely it would have been defended by X and I don't think it had a reasonable prospect for success.

Chargeback – credit not processed

I've carefully considered the information provided by Mr B in response to my provisional decision and I will start by summarising it. Mr B has provided photos of messages between him and X dated 29 September 2023 and 22 October 2023. These messages state that X agreed a refund on 29 September 2023 for \$12,000 USD (the total cost) and that this was approved by a manager.

Firstly, I find it strange that X would agree a refund of the full amount when AESEL has provided copies of a screenshot of Mr B's account (shared via text message with Mr B and dated the 28 September 2023) showing some of the airmiles had already been used. But in any event, even if I accept the content of the messages Mr B has provided, I still don't think I can uphold his complaint.

Mr B has asked that AESEL now raise a chargeback given the text messages which have been provided. However, the window for raising a chargeback has now closed so this isn't possible. As part of this complaint, I can require AESEL to pay Mr B the amount of the chargeback if I'm satisfied:

1. that AESEL has done something wrong in the handling of the chargeback and
2. that if AESEL had done things correctly, Mr B's chargeback would have most likely been successful (as it met the requirements of the chargeback and it had a real prospect of success).

Turning to the first point, as I explained in my provisional decision, AESEL did cause some unnecessary delays after Mr B approached it to raise a chargeback in December 2023. Mr B would have had 120 days from the date the refund was promised to raise the chargeback (so until late January 2024). So as explained in my provisional decision AESEL did do something wrong.

So turning to the second point, if AESEL had done everything correctly, what was most likely to have happened? In my provisional decision I set out that AESEL asked for full details of the refund, including the amount promised and when this was due to be paid in a telephone call I'd reviewed between Mr B and AESEL. This call took place in February 2024. In response to my provisional decision, Mr B has said he provided AESEL with copies of text messages providing full details of the refund. He's said that after the call with AESEL he sent this information to AESEL's correspondence address.

However, I have reviewed a subsequent call between Mr B and AESEL on 10 April 2024. In this call the representative at AESEL confirms that Mr B has provided confirmation of purchase and an email exchange between Mr B and X. Mr B confirms this is the same information he provided originally. The representative of AESEL explains that there isn't sufficient evidence from X to show the details of the refund (including how much or when this is due to be repaid). Mr B says he will go back to X to try and gain this information (implying that he doesn't have this information at this point). During this conversation there is no reference to the copies of text messages Mr B now provides from September or October 2023 or any reference to suggest these have been sent to AESEL.

So on balance, I think if AESEL had done everything correctly and asked for the specific information needed for this chargeback and in the timeframes needed (without causing a delay) it's unlikely this chargeback would have been successful. The evidence suggests to me that when Mr B was asked to provide this information in February 2024, it's most likely that he didn't provide it. There is no reference in the April 2024 call which suggests Mr B had sent this information. The call in fact, suggests Mr B didn't have this information at that time (although I accept that he may have simply forgotten or overlooked that he had it). And if that is the case, then I can't hold AESEL responsible for this. Even though AESEL caused delays I'm not persuaded that if it had expressly asked Mr B for evidence relating to the refund details, giving Mr B a reasonable amount of time to respond, that Mr B would have provided this information. I note that Mr B hasn't provided this information until I issued a provisional decision on his complaint in February 2025.

So whilst AESEL caused some delays, I think that even if it had done everything correctly, Mr B's chargeback for credit not processed would have been unlikely to be successful. I am not persuaded Mr B would have provided sufficient evidence about the refund details within the necessary time limits.

Section 75 CCA

As I explained in my provisional decision, Mr B is unable to raise a s.75 CCA “*like claim*” against AESEL in relation to this dispute. The type of card Mr B used is expressly excluded under s75(3) CCA.

My final decision

For the reasons explained above and in my provisional decision, I don’t uphold Mr B’s complaint about American Express Services Europe Limited.

Under the rules of the Financial Ombudsman Service, I’m required to ask Mr B to accept or reject my decision before 28 April 2025.

Claire Lisle
Ombudsman