DRN-5564789

The complaint

Mr B complains American Express Services Europe Limited (AESEL) mishandled his chargeback claim for a car he rented that he says was not as described.

What happened

I issued my provisional decision on this complaint on 13 May 2025. An extract from that provisional decision can be found below, which also form part of this decision.

Around 1 July 2024, Mr B paid £1,959.50 on his AESEL credit card to rent a car from a car hire company (which I'll call "H") from 1 July 2024 until 22 July 2024.

When he inspected the car on 1 July 2024, Mr B said the car had various issues including:

- *Mechanical problems*
- *An air conditioner that took 10 minutes to blow cool air*
- *An AdBlue warning that the fluid needed topping up*
- *Loose gear selector trim*
- *The exhaust was hanging down*
- *Dirty, stained seats*

Mr B kept the car because he was told no other cars were available. And on the evening of 1 July 2024, he emailed H to ask for a replacement car. Mr B kept the original car and drove it for around 210km before he was able to replace it on 4 July 2024. Mr B was happy with the new car and kept it for the remaining 18 days of the hire period.

However, Mr B was unhappy that he had to use an unsatisfactory car between 1 July 2024 and 4 July 2024. And on 1 August 2024, he asked AESEL to help him get his money back.

That same day, AESEL raised a chargeback, gave Mr B a temporary credit of £1,959.50, and told him the credit could be reversed if H successfully defended the claim. It also gave him an "estimated resolution date" for the chargeback of 25 September 2024.

Mr B read online that merchants had 20 days to defend an American Express chargeback. In early September 2024, after the deadline had passed, Mr B phoned AESEL to ask whether H had responded. AESEL said H hadn't, leading Mr B to think his claim would succeed.

However, H defended the chargeback on 13 September 2024. It said there was nothing wrong with the initial car but replaced it anyway. It also said Mr B had full use of the rental period and drove over 1,700km in that time. AESEL thought H did enough to defend the chargeback, and in October 2024 it reversed the temporary credit it had given Mr B.

Mr B said AESEL shouldn't have accepted H's defence as it was submitted after 20 days. If the defence was rejected, he says he would have won the chargeback.

Our investigator said AESEL had discretion to accept a late defence from H and, given what H said, Mr B's claim was unlikely to succeed. He didn't think AESEL acted unfairly. He also considered a possible claim under section 75 Consumer Credit Act 1974 (CCA), but said Mr B hadn't shown there was a breach of contract.

As Mr B disagreed with the investigator, the complaint has come to me for a decision.

What I've provisionally 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 considered all the available evidence and arguments to decide what I feel is fair and reasonable in the circumstances of this complaint. This includes the relevant laws, regulations, guidance and standards, codes of practice and good industry practice. And where it's unclear what's happened, my conclusions are based on what I think is most likely to have happened given the information available.

While I might not comment on everything (only what I consider key) this is not meant as a discourtesy to either party – it reflects my role resolving disputes with minimum formality. I'd like to assure both parties I've considered everything they've sent, including Mr B's further evidence following our investigator's assessment.

I think it's worth clarifying that I'm deciding whether AESEL acted fairly in assisting Mr B with his dispute against H. I'm not making a finding on the underlying dispute Mr B has with H. AESEL didn't supply the rental car, so when considering what's fair and reasonable, I'm only considering whether AESEL acted in line with its obligations as a financial services provider.

As Mr B used his credit card to pay H, I need to consider how AESEL could have reasonably assisted him through the protections offered by the chargeback process and section 75 Consumer Credit Act (CCA).

<u>Chargeback</u>

When someone buys something with their credit card, and it goes wrong, the card issuer can sometimes help them obtain a refund by raising a chargeback on their behalf. The issuer isn't obligated to do this, but I'd expect it to try if the chargeback claim is likely to succeed.

The chargeback rules are set by the relevant card scheme – in this case American Express. These rules contain conditions that must be met for a successful claim. I'd expect a card issuer like AESEL to apply the rules correctly and conduct the chargeback process fairly.

Mr B says AESEL mishandled his claim, but having looked at how AESEL conducted the chargeback process, I haven't seen anything to indicate it did anything wrong. I'll explain.

AESEL raised a chargeback under American Express' reason code "Not As Described Or Defective Merchandise". I think that was appropriate given Mr B said the car was faulty. However, even if the car had faults, the relevant rules say H can still defend the claim if it can show it attempted to repair or replace the car.

H defended the claim on 13 September 2024. It said the first car was adequate and as described, that it still replaced it on 4 July, and that Mr B drove roughly 1,700km over the 21-day hire. Given the replacement and Mr B's use of the hire period, I don't think his claim was likely to succeed, so AESEL was entitled to stop pursuing it.

Mr B says AESEL led him to believe during a call in September 2024 that the claim was decided in his favour. The only call in September took place on 6 September 2024. I have listened to a recording of this call. And I can hear Mr B had asked how long H had to submit a defence. The agent said H had 6-8 weeks from when the claim was raised, and confirmed that meant H had until 1 October 2024 to defend the claim. Mr B didn't query the timescales any further at this point. I don't think AESEL said anything misleading here, and given Mr B's lack of objection or further query I think it's likely he hadn't felt misled by the end of the call.

It seems more likely Mr B believed the claim should have been decided in his favour at a later date – and only after finding information online about a 20-day timescale for merchants to respond. But his assumption was based on information he found online and a 2019 version of American Express' chargeback guide about response timescales. It wasn't because of something AESEL said.

I appreciate why Mr B thought his claim should have been closed. But if Mr B wanted to know for certain, I think he ought to have asked AESEL for clarification. I cannot fairly hold AESEL responsible for his wrong assumptions based on information AESEL hadn't provided.

The applicable rules are the ones in force in August 2024, not 2019. Unlike the 2019 guide, the 2024 rules don't set a 20-day limit for this reason code; they only say, in general, that merchants must respond within 20 days. The rules don't say what happens if a merchant responds late, but an earlier version indicates the consequence is that a merchant's defence might not be considered, not that it won't be. In recent correspondence, AESEL confirmed the hard deadline for a merchant's response is 45 days from the chargeback, not 20 days.

Additionally, there isn't anything in the rules that forces American Express to decide for the consumer after a later merchant response. Instead, the rules state that American Express has "sole discretion" to decide chargeback disputes. Given this wide discretion, I cannot reasonably find that AESEL acted incorrectly by accepting H's defence. It was entitled to.

It's clear to me there's wide discretion both ways to reinvestigate or continue a claim. I say that because the rules allow American Express to reinvestigate a dispute if a consumer provides further information. The same isn't true for merchants. So I don't think that the discretion is one-sided. Nor have I found, in this particular instance, any evidence that discretion was used unfairly, or that its use caused an otherwise strong claim to fail.

In summary, I don't find that AESEL gave any misleading information during the chargeback process, which appears to have been resolved within a reasonable time. Based on the strength of H's defence, which was admissible under the rules, I don't think Mr B's claim was likely to succeed. It follows that I don't think it was unfair for AESEL to discontinue the claim.

<u>Section 75 Consumer Credit Act</u>

Under section 75 CCA, Mr B can hold AESEL responsible for a "like claim" he would have against H for a breach of contract or misrepresentation.

Certain criteria need to be met for section 75 CCA to apply relating to matters such as the cash price of the goods Mr B purchased and the relationship between the parties to the transaction. As I'm happy those are met here, I've gone on to consider whether there's any evidence of a breach of contract or misrepresentation.

Mr B hasn't specifically said H made any misrepresentation, nor have I seen any evidence of a misrepresentation. A misrepresentation could have occurred if H made a false statement of fact that induced Mr B into entering into the contract. But it appears Mr B's claim is more to do with being compelled to accept a hire car of unsatisfactory quality due to there being

no alternative, rather than because of H saying something false beforehand. So I've focused on whether there's been any breach of contract here.

Breach of contract

I cannot see any clause in the rental agreement that helps Mr B with his breach of contract claim. On the contrary, the agreement requires Mr B to confirm he inspected and test-drove the car, and found it to be acceptable. In other words, that he accepted it on an as-is basis.

However, even if the contract tries to limit liability, the Consumer Rights Act 2015 (CRA) implies a term into the contract that the car must be of "satisfactory quality" – a term H can't contract out of. So I've considered whether the car's quality met the required standard.

A car is of satisfactory quality if a reasonable person would find it acceptable, taking into account various factors such as its description, age, mileage and price. While a new car might be expected to be flawless, expectations would be lower for an old, high-mileage car.

The first car had around 100,000km on the odometer. I know Mr B was unhappy with the high mileage, but I haven't seen anything, on H's website or elsewhere, that suggests H promised a car with lower mileage. The website simply gives a basic description of the model of vehicle a consumer can expect to receive (or something similar). Despite Mr B's assertions the car was misdescribed, I haven't seen any evidence for this.

The remaining question is whether a reasonable person should expect a hire car with around 100,000km on the odometer to have the issues it had – which both H and Mr B disagree on.

H said there was nothing wrong with the car. It acknowledged there were some sea salt stains on the seat, but that these sometimes remain after biological cleaning and don't always come out. In other words, H says the car was clean and of satisfactory quality. On the contrary, Mr B gave a detailed list of issues the car had, as previously outlined.

As both parties disagree on what was wrong with the car, I think it's fair to only consider the issues Mr B had supporting evidence for. He provided photos of the stained seats, the exhaust, and the loose gear selector trim only. So I think those are the relevant issues here.

The photos confirm the seats are stained and the trim around the gear selector is pulled back. I don't think the photo shows the exhaust is hanging down – it appears to show hanging tape that could be part of a temporary back-box repair.

That said, I don't feel I need to make a finding on whether these are issues that a reasonable person ought to expect from a hire car with 100,000km on the odometer because of section 9(4) of the CRA. Under this section, a defect would not make goods unsatisfactory if:

- *the consumer examined the goods before the contract is made, and*
- *the defect would have been apparent upon a reasonable inspection.*

The issues Mr B points to were obvious when he first saw the car, he accepts he did notice them, and yet he still decided to take the car.

That's not to say he didn't have good reasons for proceeding with the rental. I'm aware H had no alternative. And even though Mr B could reject the car and try to find a different one from another hire car company in the area, I've no doubt he'd have had to spend a lot of extra time going down that route. There are valid reasons why he wouldn't do that.

I sympathise with the situation he was in, but the CRA doesn't make an exception for his circumstances. Put simply, he cannot accept a car with obvious issues that were known to him at the outset, and then later claim there's been a breach of contract under the CRA for those same issues.

In summary, I don't think there's been any breach of contract by H that AESEL is responsible for under section 75 CCA. As I don't think AESEL mishandled Mr B's claims in any other way, I won't be recommending that it do anything further.

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.

AESEL hasn't objected to my provisional decision. However, Mr B responded with several comments. I've carefully considered everything he said, which I understand includes the following (in summary):

- AESEL provided insufficient supporting information to justify prolonging the chargeback beyond 20 days from when it was raised. Moreover, a chargeback "partial refund" should have been considered, potentially resulting in some refund.

- AESEL didn't make it clear during the September 2024 phone call about the deadline H had to reply by.

- Mr B effectively had no choice but to accept the car, even with its flaws. Based on principles of equity, strictly applying section 9(4) of the CRA would be unfair here.

I've reviewed those points, but I'm not persuaded I should change my decision. I'll explain.

Chargeback

I've seen a copy of the 2024 chargeback rules, the regulatory timeframes AESEL provided, an extract of its internal guidelines and its business operation policy. These show AESEL has 6-8 weeks to resolve a dispute and 45 days to consider any merchant defence. Overall, I think AESEL provided sufficient documentation to show the timescales it was bound by.

The 20-day deadline mentioned in the documentation for merchants to respond is a soft limit. Based on what I've seen, the key consideration is whether the merchant's defence can be fully reviewed, and a second presentment raised within the strict 45-day window.

Here, AESEL clearly could review everything in time as the chargeback was represented on 15 September 2024, within the 45-day window. I appreciate why Mr B would like me to go into forensic detail over whether AESEL exercised its discretion fairly to allow the defence. However, I'm satisfied I've seen enough to conclude, on balance, AESEL didn't act unfairly by following a rules-based approach and accepting H's defence within the 45-day window.

Mr B also said the timescales hadn't been clearly communicated to him in September 2024, because he was given a "6-8 week timeframe" during the call rather than a specific deadline. I agree AESEL needs to communicate clearly, but I think it was clear enough.

I'm also mindful Mr B's core complaint was that the phone call led him to believe the chargeback was resolved in his favour. But having listened to the call again, it's clear AESEL did say H had time to defend the chargeback. I don't think AESEL said anything materially misleading. And if Mr B was still unsure, I'd have expected him to ask for clarification.

Overall, I don't think Mr B's chargeback claim was likely to succeed. H replacing the car is a valid chargeback defence. As H had, and there was nothing wrong with the replacement car, I don't think any chargeback (partial or otherwise) was likely to succeed.

Consumer Rights Act 2015 (CRA)

Mr B accepts the car defects he could evidence were obvious on inspection and that section 9(4) of the CRA removes the usual protection he'd otherwise have against such defects.

However, he said he had no real choice but to take the sub-standard car because H couldn't offer an alternative and he was short on time. On that basis, he said it would be fair and equitable for AESEL to provide some remedy for these special circumstances.

I recognise Mr B wanted to start his holiday promptly, but I don't think that means he was forced to take the car. I accept H had no alternative car, but Mr B was at a major international airport serviced by several other hire car companies. And I don't think, on balance, he was unable to hire an alternative car at one of these other firms. So I don't agree Mr B had no choice but to proceed with H's car.

Notwithstanding the above, AESEL is only liable under section 75 CCA for a proven breach of contract or misrepresentation by H. And I've not seen anything that convinces me I should ignore parts of the CRA or ask AESEL to take responsibility for something it isn't liable for.

The contract requires Mr B to inspect the car and accept it only if he's satisfied. These requirements are supported by section 9(4) of the CRA. I haven't seen anything proving H breached an express or implied contract term or made a misrepresentation.

For the above reasons, and those detailed in my provisional decision, I think AESEL handled Mr B's claims fairly. So I won't be asking it to do anything further.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 16 June 2025.

Alex Watts
Ombudsman