

## **The complaint**

Mr B complained about the way American Express Services Europe Limited (AESEL) handled a dispute for a refund of money for payments charged to his credit card.

## **What happened**

The circumstances of the complaint are well known to the parties, so I'm not going to go over everything again in detail. In February 2024 Mr B booked flights for himself and another passenger through an online website I'll call C. Payment for the flights were made using reward points, a reward voucher and a payment totalling £300 charged to his AESEL credit card. He then booked and paid for seat selection for each passenger on the outbound and inbound flights, which totalled £304.

In August 2024 Mr B cancelled the flights and received a refund to his credit card and return of the reward points and voucher from C. However, Mr B said he was still out of pocket and C should've refunded him the cost of the paid seat selection.

Mr B raised a dispute with AESEL in September 2024. In October 2024 AESEL told Mr B that C provided their terms and conditions which supported the transactions, so these were reapplied to the account.

Mr B responded to AESEL a number of times to explain his dissatisfaction with the way his disputes were handled and explained that as he cancelled the flights and the paid seat selection couldn't be provided by C, this meant it was unfair to keep the payments for these. Mr B said that he was unable to use the seats, and these were likely resold by C. He referred to the Consumer Rights Act 2015 (CRA) to support his argument on why he thought C acted unfairly and asked AESEL to recover the money through Section 75 of the Consumer Credit Act 1974 (Section 75). AESEL sent final response letters to Mr B in November and December 2024. In one of the responses it acknowledged there was misinformation about how one of the chargeback disputes was processed and applied a £50 credit to Mr B's account. Its overall position was that the chargeback outcome was correct.

AESEL considered a Section 75 claim and sent its response at the beginning of February 2025. It said it didn't agree there was a breach of contract as Mr B voluntarily cancelled the flights and because of this, he wasn't due a refund of the amount he paid for seat selection in line with C's terms and conditions.

Mr B was unhappy with this, he said AESEL incorrectly said the fare wasn't refunded to him, but it was. He was also unhappy that AESEL relied on C's terms and conditions – which he thought were unfair. AESEL sent a final response towards the end of February 2025 and said it thought the Section 75 claim outcome was correct. As AESEL didn't agree to refund Mr B he referred his complaint to the Financial Ombudsman. An investigator reviewed Mr B's complaint but didn't uphold it. He didn't think AESEL made an error in the way it handled Mr B's chargeback and Section 75 claim.

Mr B didn't agree with the assessment. In summary he said:

- The investigator and AESEL didn't properly consider the fairness test under the CRA and therefore didn't consider the validity of the Section 75 claim properly.
- C's terms are unfair as they cause a significant imbalance as no services were delivered, yet it retained the cost of the seat selection and had the option to resell these seats.
- Although the seat selection terms said it was non-refundable – this didn't mean it was fair even if it was visible when the booking was made.

He wanted a refund and compensation for the way his dispute and complaint were handled. As the matter remains unresolved, it has been passed to me to decide.

I issued a provisional decision on this case. In this I said:

*I want to acknowledge that I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I want to assure Mr B and AESEL that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.*

*Where evidence is incomplete, or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.*

*I understand Mr B is unhappy that C didn't agree to refund him the cost of the paid seat selection. But I need to consider the actions of AESEL as the financial services provider in this complaint. I'm not considering a complaint about C. I've considered if AESEL has acted fairly and reasonably in the way it handled Mr B's request for a refund.*

#### **Chargeback**

*In certain circumstances a card issuer can raise a chargeback or dispute under the relevant card scheme rules, in this case it's the American Express scheme. This is where the card member 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. Whilst there is no obligation for the card issuer to raise a chargeback, I think it's good practice to do so, where there is prospect of success.*

*I think the most relevant rule for the circumstances would have been "Credit not processed/ Goods/services cancelled". The rules say that evidence to support a request for chargeback reversal from C should include: "A copy of your cancellation policy, an explanation of your procedures for disclosing it to the Cardmember". AESEL raised a dispute with C and it was defended on the basis that Mr B cancelled the flights voluntarily and the seat selection wasn't refundable in line with the terms and conditions. C provided the terms and conditions for paid seating and when a refund is due. It demonstrated where the terms and conditions were available on its website. Based on the rule, I think this was a valid defence and I don't think it was unreasonable that AESEL didn't pursue the chargeback further.*

*I've also thought about whether there were any other conditions that AESEL could have used to process a chargeback. But I've not seen anything that would've led to a different outcome.*

*Mr B also complained about the way his chargeback claim was handled and the information that was displayed when he checked the progress of the claims.*

*B offered and paid £50 for the incorrect information Mr B was given. I appreciate that it was frustrating for Mr B and the information he was given would have caused some confusion. I think the compensation that AESEL paid was a fair way to resolve this. I think it handled the outcome of the chargeback reasonably and I don't think as a result of AESEL's actions Mr B had a financial loss.*

*Mr B has raised concerns about unfair contract terms under the CRA. However, assessing whether a term is unfair under the CRA is a matter for the courts. I don't think the card scheme rules allows for consideration of this. So, I think AESEL acted fairly in raising the dispute and closing the claim based on the evidence it was presented.*

## **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 C in this case. 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 transaction must relate to a single item to which the supplier has attached a cash price of more than £100 and £30,000.*

*Mr B paid for the seat selection for himself and another passenger. As Mr B paid for part of his ticket and seat selection using his credit card with AESEL, I think the correct DCS agreement is in place for the payment of his own seat selection. And whilst I have noted that C's General Conditions of Carriage defines under a consumer as "a man or a woman who has bought a ticket under a contract governed by the law of a member state of the European Union and plans to use it for travel outside his or her trade, business or profession" I have also noted it also defines "You, your" as "any person holding a ticket who is to be carried or is carried on an aircraft, except members of the crew, or, in relation to ticket refunds, the person who paid for the ticket." As Mr B's claim relates to a refund, I think there is some scope to say that this part of the criteria is met for a valid DCS agreement for a Section 75 claim for Mr B and the other passenger.*

*However, in order to meet all the relevant criteria, the claim also needs to meet the relevant financial limits. I can see that Mr B asked about financial limits to the complaints team and he was redirected to the Section 75 team for his queries. I think Mr B was right to ask about the financial limits as this is also relevant to decide if a valid Section 75 claim exists. I appreciate Mr B has said that the charge for the seat selection was a total of £304 – so a single transaction – split into four parts. However, I think that each seat selection could have been paid for separately and didn't necessarily need to be bought all together.*

*As the charge for each seat selection was less than £100 it may be that the criteria for a valid Section 75 claim wasn't met. On the other hand, I think that there is an argument to say that the seat selection was an add on to the original contract for flight tickets, which might mean that a Section 75 claim could be considered as this would mean it met the financial limits for at least the payments made for Mr B and his contract with C. It's not straight-forward. However, I do not believe it is necessary to explore the requirements to meet the criteria any further, as it does not influence my overall decision. This is because I have not found sufficient evidence to conclude that C breached its contract or made a misrepresentation. I'll explain why.*

*Based on the information presented I can't say there was a false statement of fact which induced Mr B into the contract, which meant there was a misrepresentation. Mr B has focused on there being a breach of contract, so I've considered if AESEL's answer on this was fair.*

## **Express terms**

*Mr B has said that as he received a full refund of the fare cost of the flights he should have been reimbursed the cost of the charges for the seat selection.*

*I understand that a key point of Mr B's dispute and complaint is C's refusal to refund Mr B the costs of the paid seat selection. It has relied on the terms and conditions, which state:*

*"Paid seating is non-refundable unless:*

*We change your seat to an alternative that you're unhappy with*

*We cancel your flight You become ineligible to sit in an exit row and you tell us at least 48 hours before your scheduled departure time*

*You've paid for a cabin upgrade and don't want to pay the difference to choose your seat in the upgraded cabin*

*[...]*

*For the avoidance of doubt, paid seating will not be refunded if you*

*Cancel your flight"*

*As Mr B cancelled his flight I don't think there was a breach of the express terms for paid seat selection and therefore, I don't think it was unreasonable that AESEL declined to refund Mr B the seat selection on this basis.*

*Implied terms*

*The CRA also is relevant, and I've taken this into consideration when deciding this case.*

*Mr B has argued there has been a breach of contract because there was a significant imbalance in C's terms and conditions because the seat selection was non-refundable. I understand that Mr B has said that it was disproportionate that C retains the funds in the event he cancelled the flight and therefore the seat selection was unavailable to him and could've been sold to someone else. As I mentioned above only a court can decide if a term is unfair.*

*However, an example of an unfair term could be one that requires a consumer to pay a disproportionately high amount in compensation, if they decide not to proceed with the contract. In this case I can understand why Mr B thinks C's cancellation terms for paid seat selection could come under suspicion of being unfair. In those circumstances, the effect of the unfair term is that the part of the term that isn't fair is read out of the contract. But that doesn't allow me to read new language in that re-writes the contract – for example by saying that a fair proportion of any pre-paid sum is recoverable. The rest of the contract is silent on this point. Therefore, even if I were to find that Mr B should not be bound by C's cancellation terms, I'm still unable to identify a breach of contract that would entitle him to a refund whether in full or in part of the amount he's paid.*

*I appreciate that Mr B feels very strongly about the matter and has taken a lot of time and effort to pursue his dispute. Based on the evidence available and AESEL's handling of the dispute based on its liabilities as the financial services provider, I don't find that I have grounds to direct it to refund Mr B.*

*However, I think AESEL could have dealt with the Section 75 claim more promptly. I can see Mr B referred to a Section 75 claim when he complained about the outcome of the chargeback dispute in October 2024. However, AESEL didn't give its answer on this until February 2025. AESEL said that this was a separate process, however I can see that Mr B supplied information about his dispute as part of the chargeback process so I think AESEL could have told Mr B its position on the Section 75 claim sooner.*

*I think there was added inconvenience to Mr B before it did, as he had to correspond and provide information that AESEL already had to consider a Section 75 claim. I think it should pay £100 to reflect the added inconvenience to Mr B and to reflect the delay.*

*I appreciate my decision will be disappointing to Mr B. I think AESEL fairly processed a chargeback claim and I don't think it needs to refund Mr B under a claim under Section 75. However, I think AESEL should have given Mr B an answer on the Section 75 claim sooner so I think AESEL should pay Mr B £100 to reflect the delays in its claim handling.*

AESEL responded to accept the provisional decision and pay compensation of £100.

Mr B responded to say that he appreciated the acknowledgement of the delays in AESEL's handling of the Section 75 claim and the award for £100 compensation, however he was disappointed with the approach taken in the assessment of the fairness of the terms. He said that by declining to assess the unfairness of the contract terms it limited the opportunity to challenge the unfairness of terms unless it is taken to court.

### **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 noted Mr B's comments about the restrictions in considering how a term can be deemed unfair however I whilst I understand Mr B's sentiments I'm not persuaded to depart from my provisional decision.

I know Mr B is unhappy and feels I've not assessed the fairness of the contract terms. I mentioned only a court can rule on fairness because I considered the CRA sets out the duty of court to consider the fairness of a term. I don't make rulings in the same way as the court. I need to consider how AESEL acted based on what was presented. But, for the avoidance of doubt, I've considered what I think is fair and reasonable in the circumstances of this complaint – including by listening to what Mr B said about the fairness of the term. While I understood Mr B's concerns about the term he complained of, I've considered whether AESEL could be held liable for a breach of contract if the cancellation terms are taken out of the contract (which is what happens when a term is deemed unfair). I found even if I were to consider the term unfair, I still don't think AESEL could be held liable for a breach of contract under Section 75 as the rest of the contract doesn't state that Mr B is due a refund.

I appreciate Mr B's comments however based on what I think is fair and reasonable I don't think AESEL needs to refund Mr B, but it should pay £100 for the delay in considering the Section 75 claim.

### **My final decision**

I uphold this complaint and direct American Express Services Europe Limited to pay Mr B £100 compensation. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 5 December 2025.

Amina Rashid  
**Ombudsman**