

The complaint

Mr P has complained about how American Express Services Europe Limited (AESEL) handled a refund claim he made.

What happened

The details of this complaint are well-known to both parties, so I won't repeat them again here. The facts aren't in dispute, so I'll focus on giving the reasons for my decision.

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 read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that AESEL aren't the provider of the services here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr P paid for this transaction using an AESEL credit card, both chargeback and a Consumer Credit Act 1974 (CCA) Section 75 (S75) claim could possibly help him. So in deciding what is fair and reasonable I've focused on this.

I note AESEL did look at a chargeback claim initially for Mr P. They declined this as they felt they had insufficient evidence for a reasonable prospect of success if they progressed the claim further. Mr P's email to this service of 1 February 2026 clearly states that *"in any event, the chargeback claim has nothing to do with my Section 75 claim. It was superseded by my Section 75 claim, which is the claim I am asking the Financial Ombudsman to resolve"*.

As a result, I won't be looking at AESEL's handling of Mr P's chargeback claim as his complaint is regarding the S75 claim.

S75

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services. But for there to be a valid claim under S75 there are certain technical requirements and I'm satisfied they've been met here.

Turning to Mr P's complaint, in summary, he used his AESEL credit card to purchase business class tickets from an airline I shall call 'D'. Mr P flew out at the end of October 2024 and was scheduled to return on 9 November 2024. However, on arriving at the airport he discovered he had been downgraded as the airline had overbooked. He therefore was unable to travel in his booked cabin for the flight home.

D subsequently credited him with a partial refund based on their terms and conditions. Mr P didn't think this was appropriate and felt that he was due a full refund. I've therefore considered the available evidence to determine whether AESEL need to do anything more here.

From the outset I must note that Mr P considered that applicable law hasn't been followed and that too much weight has been placed on D's terms and conditions. In reaching my findings, I've considered both the contractual position and the wider legal framework.

S75 doesn't provide a mechanism to enforce statutory compensation regimes directly. Instead, it requires me to consider whether there had been a breach of contract or misrepresentation and what loss flows from that. While regulatory provisions can be useful when assessing what may be fair and reasonable in valuing the loss, they don't automatically determine the outcome under S75.

In this case, I'm satisfied the appropriate approach is to assess the impact of the downgrade itself, rather than apply the regulations as a standalone entitlement across the entire booking.

With that in mind, I've considered D's explicit terms as well as the implied terms of the Consumer Rights Act 2015. D's terms and conditions say:

*"If you're **downgraded** from the travel class you originally booked, you will be eligible to claim for a partial refund on the downgraded sector, excluding taxes and charges. The refund amount will vary depending on the length of your journey. If you have not been contacted about your refund, you can raise a claim.*

- **Up to 1500kms** - 30% reimbursement of fare paid for affected sector.
- **1500kms to 3000kms** - 50% reimbursement of fare paid for affected sector.
- **3500kms and above** - 75% reimbursement of fare paid for affected sector".

In this case the distance of travel meant Mr P was due a 75% refund for the ticket price for that flight. D provided a refund for £1897.50 in January 2025 with mind to these terms and conditions.

I'm satisfied here that there was a downgrade affecting one sector of the journey, which represents a breach of contract. I've also considered Mr P's reliance on EU regulations for denied boarding and downgrades, which provides reimbursement of a percentage of the ticket price where a passenger is placed in a lower class. I note it has similar wording to the D's explicit terms and says the following under Regulation (EC) No 261/2004 (2):

"If an operating air carrier places a passenger in a class lower than that for which the ticket was purchased, it shall within seven days, by the means provided for in Article 7(3), reimburse

(a) 30 % of the price of the ticket for all flights of 1500 kilometres or less, or

(b) 50 % of the price of the ticket for all flights between 1500 and 3500 kilometres, or

(c) 75 % of the price of the ticket for all flights not falling under (a) or (b)."

I've considered the wording of the regulations including the reference to 'all flights'. In this context, I don't consider this means all flights within the booking. Instead, it relates to how the refund percentage is determined by the distance of the affected flight. As the downgrade occurred on one specific sector, I'm satisfied that any reimbursement applies to that flight only, rather than the entire journey.

While I've taken the regulations into account, I don't consider the regulations, in themselves, provide a basis to award compensation beyond the loss arising from the downgraded flight itself, and I haven't seen evidence that any greater loss has been incurred.

Regarding the CRA, I've considered Mr P's references to various sections of the Act. These relate to a service being carried out with reasonable care and skill, performance within a reasonable time where this hasn't been agreed, and the fairness of contract terms.

In this case, I'm satisfied D didn't provide the service as agreed due to the downgrade, which I've already considered as a breach of contract. However, I haven't seen evidence that the service was carried out without reasonable care and skill or within an unreasonable timeframe. I also haven't seen evidence that any relevant contractual term here is unfair under this Act. In the circumstances, I don't consider these provisions lead to any additional remedy beyond the compensation already considered for the affected flight.

Mr P has said that D's service fell below an acceptable standard and he was only informed of the downgrade at the airport. I appreciate this would've been frustrating, and I recognise that being notified at that stage is not ideal. However, situations like this can arise in airline operations.

With S75 in mind, I must consider whether there has been a breach of contract or misrepresentation, and what loss has resulted from that. I'm not able to assess the general standard of customer service or how the situation was handled in isolation. Instead, I've focussed on whether the downgrade itself amounted to a breach of contract and what compensation fairly reflected that loss.

I've not seen any evidence that D's conduct amounted to a separate breach of contract or resulted in any additional financial loss beyond the downgrade itself. As such, I don't think it would be fair to increase or extend the refund on this basis.

While I've considered the relevant regulations and Mr P's wider concerns about how the situation was handled, as I've explained above, I consider it fair to compensate Mr P for the difference in value between the service paid and the service received on the affected sector.

I've also considered that D additionally offered Mr P £200 in cash or £300 in travel credit, following the downgrade. In these circumstances, I'm satisfied this additional amount is fair for what happened and don't consider any further payment is due.

As such, while I find AESEL liable under S75 for the breach of contract, I'm satisfied the compensation already offered fairly reflects the loss arising from the downgrade. I therefore won't be asking AESEL to do anything more.

My final decision

For the reasons explained above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 15 April 2026.

Viral Patel
Ombudsman