

The complaint

Mr O complains that American Express Services Europe Limited (AESEL) hasn't refunded a payment he made using his credit card.

What happened

In June 2023, Mr O says he was searching online for a one night stay at a hotel near a specific UK airport. He wanted to stay the night before a flight he had booked. He found a hotel matching his requirements and proceeded to book through a booking website (who I'll refer to as "H"). Mr O says he selected a one night stay and was quoted the price for one night and input his AESEL credit card details to pay.

Mr O says he then received his booking confirmation by email from H which showed that he had been charged for eight nights, not one. He emailed to request a cancellation and a refund and he says he received an email confirming the booking had been cancelled. However, as no refund was received, he approached AESEL for help in getting his money back.

AESEL initially provided a temporary refund while it looked into the matter. Shortly afterwards it reversed the refund because it said that Mr O's booking had been non-refundable and therefore it had no recourse with H to get his money back. Mr O complained to AESEL about its decision not to refund him, but it didn't agree it had acted unfairly.

I sent Mr O and AESEL my provisional decision on 17 June 2024. I explained why I thought the complaint should be upheld. I said:

As Mr O paid for the booking using his AESEL credit card, I've considered whether AESEL acted fairly in trying to obtain a refund for him.

There were two possible options available to AESEL. The first was by processing a chargeback and the second was considering his claim under section 75 of the Consumer Credit Act 1974 ("section 75").

A chargeback is a process by which certain card billing disputes can be settled between merchants (such as H) and card issuers (such as AESEL), on behalf of their customer who made the transaction (in this case Mr O). A chargeback doesn't guarantee a refund and there are limited grounds on which one can be attempted. AESEL says it tried to process a chargeback but that this was defended by H and that it had no reasonable grounds on which to challenge that defence. Whether or not that was a reasonable response to the merchant's defence is debatable, but I don't think AESEL's handling of the chargeback ultimately makes a difference to the outcome I've reached.

I say this because I consider that AESEL ought to have provided Mr O with a refund in any event, by considering, and upholding, his claim and complaint under section 75. I note AESEL didn't even consider a claim under section 75 because it says Mr O didn't raise one. However, I don't think Mr O needed to explicitly frame his request for

a refund in such a prescriptive way for AESEL to have considered all the possible options for which it might provide Mr O the refund he was seeking. In treating him fairly and reasonably when he reached out for help with getting a refund, I consider AESEL ought also to have thought about what that meant in terms of any section 75 liability.

The general effect of section 75 is that if Mr O has a claim for breach of contract or misrepresentation against the provider of goods and services (in this case, H), he can bring a like claim against the provider of credit (in this case, AESEL). There are certain conditions that need to be met for a section 75 claim to be made. For completeness, I'm satisfied those conditions are met here.

Mr O paid H to arrange a hotel booking. He says it was for one night, H says that Mr O selected eight nights. H has provided copies of its booking confirmation to AESEL showing Mr O paid for eight nights. While this might ordinarily be compelling evidence, the circumstances of this specific case mean that I'm less persuaded by it.

Mr O says that there are hundreds of negative reviews online about H overcharging customers and adding hidden fees after they have handed over their card details for payment. I've conducted my own research online and found what Mr O has said to be accurate. I've struggled to find any positive customer experiences of using H's booking system with almost every review referring to hidden fees being added after card details were handed over or being incorrectly charged for hotel bookings.

H appears to be part of a larger parent organisation. The parent organisation operates a similar booking service and while it has some positive reviews online, there are also numerous reports similar to Mr O's experience regarding incorrect bookings and overcharging.

Given the above, it seems possible that Mr O had selected a one night booking but H had incorrectly, and against his wishes, been charged for eight (whether deliberately, or because of some systems error). What gives this further weight is the circumstances around which the booking was made. The hotel Mr O booked for was an airport hotel. Further, Mr O had booked it for the night before he was due to depart on a flight from that airport. Therefore, Mr O had no reason to book a stay for eight nights.

The Consumer Rights Act 2015 implies terms into contracts for services that the services need to be performed with reasonable care and skill. Given the series of similar reports of issues with H's booking system overcharging (and almost no reports of successful bookings), I find it more likely than not that the booking was processed for eight nights because of an error made by H, not Mr O.

I accept that Mr O's reasons for booking and these online reviews are not proof that Mr O didn't simply make an error when making his booking, by for example, clicking the wrong box or button. I realise that is still a possibility, but I can't know for certain and I therefore have to reach a conclusion on what I consider to be most likely to have happened in the circumstances.

Having done so, I'm persuaded, on balance, that it is more likely than not that Mr O did select and contract with H for it to arrange a one night booking only. And I'm persuaded it is more likely than not that H did not perform its services with reasonable care and skill which resulted in the wrong booking being processed and Mr O being overcharged. This was therefore a breach of contract for which AESEL could be jointly liable under section 75. For this reason, I don't think AESEL acted

fairly and reasonably when it didn't provide Mr O with a refund, and it now needs to put things right.

As the hotel booking was cancelled and Mr O couldn't use the booking that H had reserved for him, I think it's fair and reasonable that he receives a full refund of what he paid. If Mr O has paid off the balance for this purchase on his credit card then AESEL should also pay him 8% simple interest per year on that refund from the date he paid it off to the date of settlement.

Mr O accepted my provisional decision, but AESEL didn't. In summary, it said:

- It's clear that the booking was non-refundable based on H's terms and conditions so a chargeback could not succeed.
- H provided evidence to show that Mr O had accepted the terms and conditions and that he had agreed to the total amount payable.
- Mr O paid H for the booking, H was not the supplier of the hotel room. There is therefore no debtor-creditor-supplier agreement in place for Mr O to be entitled to make a section 75 claim against AESEL.

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.

Having done so, I've reached the same outcome I reached in my provisional decision and for broadly the same reasons. I will however address the additional point AESEL has raised and explain why these don't change the outcome I've reached.

AESEL says that a chargeback wouldn't have been successful because H showed that Mr O had accepted the terms and conditions which stipulated that bookings were non-refundable. While I accept that a chargeback may not have been successful, I still consider that there was a breach of contract for which Mr O could claim under section 75.

AESEL says that the required debtor-creditor-supplier agreement wasn't in place for it to be liable to Mr O under section 75. It says this is because H was not the supplier of the hotel room. But in saying this AESEL has demonstrated a clear misunderstanding of the claim Mr O is making and a misunderstanding of section 75 more generally.

A debtor-creditor-supplier agreement is the arrangements that need to exist between the relevant parties in order to make a section 75 claim. The formal wording is set out in section 12 of the Consumer Credit Act 1974 and in summary, says there needs to be 'pre-existing' arrangements between the creditor and the supplier.

While I accept the hotel room was supplied by the hotel, H was also acting as a supplier of services to Mr O. Mr O had contracted with H to arrange his booking with the hotel. His claim is that H did not do this correctly as it booked for eight nights instead of one – his claim is not about the hotel room itself or about any actions undertaken by the hotel.

I'm therefore satisfied there were pre-existing arrangements between AESEL and H and therefore AESEL can be liable under section 75.

As I set out in my provisional decision, I am persuaded, on balance, that H did not perform its services (that Mr O had contracted it to do) with reasonable care and skill. And that its failure to do this resulted in a loss to Mr O for which AESEL ought to remedy.

AESEL has provided a copy of H's defence to the chargeback it completed. I've noted that it has provided a screenshot which it alleges Mr O would have seen before processing his booking and that this screen made it clear what the total cost and booking duration would be. However, I've also noted that H's chargeback defence states that it called the hotel to try and get a refund but that this request was denied and implies that this is the reason Mr O did not receive a refund. This action seems at odds with what it also asserts as a non-negotiable, no refunds policy.

As I said in my provisional decision, I do accept it's possible that Mr O was presented with information showing the booking for eight nights and the total price for that stay before he clicked proceed. However, when balanced against all the other information and evidence available to me such as:

- The booking was for an airport hotel and Mr O was due to be on a flight from that airport on the second day of the eight-night booking;
- There are a significant number of reports online stating that H has allegedly incorrectly overcharged many customers after a booking has been accepted; and
- The H's defence to the chargeback appears to provide contradictory information about its refund policy.

This leads me to conclude that it is more likely than not that Mr O did select a one night stay but due to H not carrying out its services with reasonable care and skill he ended up paying for eight. As he was unable to utilise the hotel booking as it was cancelled, I think it's fair and reasonable for AESEL to refund the entire amount he paid.

My final decision

For the reasons given above, I uphold this complaint and direct American Express Services Europe Limited to:

- Refund Mr O £952.05 representing the full cost of the booking.
- If Mr O has paid off that balance on his credit card, AESEL should also pay 8% simple interest per year on that refund from the date Mr O paid off the balance to the date of settlement.

If AESEL considers tax should be deducted from the interest element of my award it should provide Mr O with a certificate showing how much it has taken off so he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 30 July 2024.

Tero Hiltunen
Ombudsman