

## The complaint

Mr M complains that American Express Services Europe Limited (AESL) failed to pursue his chargeback claim in respect of a faulty car.

## What happened

In June 2020 Mr M bought a car at a cost of £1,750 which he paid for using his AESL credit card. It was some 12 years old and had covered over 76,000 miles. Some two weeks later it broke down and he called out the AA. The mechanic's report stated:

*"Advice given to member. Timing chain has broken causing internal engine damage engine is now seized. Engine will not crank over manually."*

Mr M reported this to the dealer and it arranged for the car to be taken to a local garage. It reported:

*"Timing chain checked, timing chain found to be intact video sent. Oil level checked and found to be at least 9 inches above the maximum mark. Sump plug removed to lower the oil level and check the oil condition but found the sump was full of water. See video." It later states: "In my opinion the only way the engine could have that amount of water in it would be from the vehicle going through a substantial amount of water." And finally, it states: "The water could not have been in the engine at the time of sale or the engine would not have ran."*

Mr M sought further clarification from the AA and it replied as follows:

*"The member advised she would like it put on the breakdown report: The oil was not contaminated with water at the time of breakdown. Which I can confirm it was not contaminated with water and was at the correct level also at a good quality state. The engine is seized due to an internal engine fault suspect timing chain, attempted to crank engine over by hand but would not do a full revolution on a quarter witch (stet) says to me the pistons are making contact with the valves."*

AESL made a chargeback request on behalf of Mr M and after receiving a response from the dealer it concluded the claim should stand. However, the dealer submitted further information and AESL changed its mind. It offered Mr M compensation of £100 for poor service.

Mr M brought his complaint to this service where it was considered by one of our investigators who recommended it be upheld. She noted the conflicting evidence and said she thought AESL should have put the matter to arbitration. However, she said that she thought it was right to place more weight on the AA report as it was an independent service and the garage carried out the work for the dealer free of charge which did not suggest full independence.

She said that although Mr M did not refer to section 75 Consumer Credit Act 1974 our service expected businesses to consider if the consumer had a valid claim. She thought it

likely that a claim under section 75 would have succeeded.

AESL didn't agree and said that there was not enough evidence to support the chargeback claim and it had reached a reasonable conclusion. It noted the AA report said that its findings should be checked by another garage before getting any further work done. It also said that a roadside assistance report carried less value than a specialist report. It suggested the matter would be best dealt with by the Motor Ombudsman.

### **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.

Where necessary and / or appropriate, I reach my decision on a balance of probabilities – that is, what I consider is most likely to have happened in the light of the available evidence and the wider surrounding circumstances.

This is a finely balanced matter and I have given a great deal of consideration to the material which both parties have provided.

I will deal firstly with the chargeback. It may help if I explain the chargeback system. Chargeback doesn't mean there is joint liability on the card company. It is a voluntary scheme administered by the card provider. The consumer makes a claim to their bank and it puts a request to the merchant's bank. But there are no guarantees the consumer's bank will be able to recover the money through chargeback, or that the merchant will accept that the claim is justified.

In this case the chargeback was initially successful as the dealer did not provide sufficient information to challenge the claim the car was faulty. However, it did later submit additional information and this was enough to persuade AESL not to pursue matters further. I can see why it reached that conclusion and while arbitration would have been preferable I don't believe it was unreasonable for AESL to have reached the decision it did.

The next issue is the failure to consider section 75. This service expects businesses to explore section 75 in addition to a chargeback claim. Consumers may not be fully aware of their rights and I believe AESL should have told Mr M about section 75 and considered if it applied.

With regard to section 75 in considering what is fair and reasonable, I need to have regard to the relevant law and regulations, regulator's rules, guidance and standards and codes of practice and (where appropriate) what I consider to have been good industry practice at the time.

The relevant law says that under a contract to supply goods, there is an implied term that *"the quality of the goods is satisfactory"*.

The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances. So it seems likely that in a case involving a car, the other relevant circumstances a court would take into account might include things like the age and the mileage at the time of sale and the vehicle's history.

Under the relevant law the quality of the goods includes their general state and condition and other things like their fitness for purpose, appearance and finish, freedom from minor defects, safety, and durability can be aspects of the quality of the goods.

The car was fairly old and had covered over 76,000 miles and so it is reasonable to conclude that it will have suffered from noticeable wear and tear. I don't believe Mr M disputes that, but it suffered a catastrophic breakdown and the cause is disputed with two mechanics reaching different conclusions. I would mention that while AESL may have more recently suggested the matter be considered by the Motor Ombudsman, Mr M is entitled to bring a complaint to this service.

I agree that the AA report was based on a roadside investigation and I also agree with our investigator that the garage report, which is actually recorded as an invoice, was done free of charge for the dealer by a local garage. To some extent it can be said that the garage's report is not wholly independent. That means I am left without a comprehensive independent report on the car.

The issue of concern is that the garage report and video show a clear liquid being drained from the car and then a black liquid comes out next, but the AA mechanic has said that the oil wasn't contaminated with water and was in a good state. The car wasn't working at the time of the AA inspection and I have no reason to dispute the AA's findings at that point in time that the oil wasn't contaminated. The garage has sent a video which it says shows the chain working after the AA mechanic had said it was broken. His subsequent report says that he believed the engine was seized due to an internal fault, possibly a broken chain.

It has also been suggested that Mr M may have caused the problem by putting water into the engine. While I agree that this is possible I think it highly unlikely and without clear evidence I don't believe it reasonable to take this suggestion as a likely explanation. That would require Mr M to have done so after the AA inspection, but it had already broken down so why would he do so at that point? However, I cannot say how water ended up in the engine.

I appreciate the information supplied by the garage which looked at the car, but I do not consider that is sufficient to allow me to disregard the AA report which is fully independent and was undertaken at the time the car broke down.

As I have said I consider this to be a finely balanced decision, but I have concluded that at the time the car broke down there was no evidence of contaminated oil. The car had suffered a major failure at that point and given this occurred a month after the date of sale I cannot safely conclude that the car was of sufficient durability.

### **Putting things right**

Mr M should be allowed to reject the car.

### **My final decision**

My final decision is that I uphold this complaint and I direct American Express Services Europe Limited

- refund £1,750 and reconstruct the credit card account from April 2021 when the claim was overturned refunding any interest or charges as necessary.
- pay an additional £100 for the distress and inconvenience caused.
- arrange collection of the vehicle at no cost to the customer or reimburse Mr M for any collection charges.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 28 July 2022.

Ivor Graham  
**Ombudsman**