

The complaint

Mr S complains that a TV he bought with credit provided by American Express Services Europe Limited ("AESEL") wasn't of satisfactory quality. He wants AESEL to refund the cost to his card, plus instalment and uninstalment costs. He also complains about the way AESEL handled his claim.

What happened

Mr S bought a TV from a shop I will refer to as "A", using his AESEL credit card, in November 2019. He noticed a fault with the TV, within six months of purchase, and contacted A. He says the screen was blurred and bleeding.

He contacted A at least three times, but it didn't provide him with any help. It eventually told him to refer to the manufacturer. He says he contacted the manufacturer and provided evidence of the fault. The manufacturer confirmed there was a fault and told him to go back to A for a refund or replacement. But when he contacted A, it didn't reply.

So, in March 2021, Mr S raised a payment dispute with AESEL through its online portal. After Mr S supplied it with evidence and it investigated, AESEL said (in May 2021) that it was too late to raise a dispute and referred him back to A. Mr S still failed to get a response from A and referred back to AESEL in August 2021. He asked it to re-open his case – but AESEL again told him he was out of time and would need to refer back to A.

Mr S referred his complaint to this service. He said he wanted the cost of the TV, plus delivery and installation (£402.95) to be refunded, plus the expected cost of uninstalling the TV, a further £100.

AESEL investigated his complaint and said it couldn't locate a section 75 claim from Mr S. It set up a claim and asked Mr S to complete its claim form and provide evidence, but it didn't hear back from him so didn't progress the claim.

Since referring his complaint to us, Mr S again contacted A to try to get a refund. He says the store manager issued him with an £80 gift receipt, which he says he accepted on the understanding that it wasn't in full and final settlement of his claim.

Our investigator didn't think AESEL had treated Mr S fairly. She thought AESEL should have initially treated Mr S's dispute as a section 75 claim and that it didn't need any additional evidence to proceed with the claim. She recommended AESEL pay Mr S £50 for the poor service he received, and £69 as a price reduction for the faulty TV. She didn't recommend a higher refund as Mr S had continued to use the TV.

AESEL didn't agree, saying that it didn't proactively offer section 75 claims as it had to protect the interests of all its customers, including merchants. And that it couldn't proceed with a section 75 claim because Mr S hadn't completed its form.

My provisional decision

I was minded to agree with our investigator that the complaint should be upheld, and I explained why. I said:

Firstly, I find there is a fault with the TV Mr S purchased using his credit card. He's provided evidence of the "bleed" on the screen. I'm satisfied this is the same fault that he reported within six months of buying the TV and the fault which Mr S says the manufacturer agreed existed and couldn't be fixed.

Secondly it's clear that he tried on many occasions to obtain a refund or replacement from A. He contacted it by email and through its webchat but didn't receive a response. He couldn't initially engage in person with the store where he purchased the TV because of the national lockdown. More recently, and since referring his complaint to us, his local store manager provided him with an £80 gift card – Mr S says that was the maximum the store was able to authorise.

Mr S purchased the TV using a credit card. So, once he had exhausted his attempts to seek redress from A (and the TV's manufacturer), he raised a payment dispute with AESEL.

I wouldn't reasonably expect Mr S to have the expertise to know the terminology around a payment dispute, or to understand the different ways of disputing a payment. He raised a dispute through AESEL's online portal, and I don't think it an unreasonable expectation that AESEL should guide him through the process.

Chargeback

Banks can help settle some disputes between customers and retailers by submitting a chargeback request for a transaction. Chargeback is a way for customers to dispute certain card payments and is run by the card scheme. A chargeback can only be done for certain specific reasons and within certain timescales. When Mr S contacted AESEL about his claim, the 120-day timescale for making a chargeback request had expired.

AESEL didn't attempt a chargeback request because it was outside of the timescales set by the card scheme rules. I don't think this was unreasonable – AESEL was obliged to comply with the card scheme rules.

Section 75

In considering whether AESEL treated Mr S fairly, 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 having been good industry practice at the time. In this case, relevant law includes Section 75, amongst others. Importantly, I'm not determining the outcome of a claim that a party might have under Section 75. Rather, when I think about what a fair way is to resolve Mr S's complaint, I have to take account of relevant law, but that doesn't mean I'm obliged to reach the same outcome as, for example, a court might reach if Mr S pursued a claim for misrepresentation or breach of contract. This is because, our service is an informal alternative to the courts, and it operates under different rules from a court.

The general effect of Section 75 is that if Mr S has a claim for misrepresentation or breach of contract against the retailer, he can also bring that claim against AESEL provided certain conditions are met.

I've firstly thought about whether AESEL should have done more to progress this for Mr S, and I think it should have done. I say this because Mr S didn't need to know the best way of him pursuing his claim. He simply needed to tell the bank he disputed a payment because the item he'd received wasn't of satisfactory quality. As it was too late for AESEL to make a chargeback request, I would have expected it to progress a section 75 claim. Mr S had provided enough evidence to show there was a fault with the TV and that his efforts to resolve the matter with A had been unsuccessful. AESEL says Mr S could only have requested a section 75 claim by phone. But it's not provided evidence to show that this was brought to Mr S's attention and I find it wasn't unreasonable for him to expect AESEL to pursue a section 75 claim with the information he'd provided.

AESEL says it doesn't proactively offer section 75 claims as it needs to treat all its customers, including merchants, fairly and it doesn't want to encourage legal action. My role isn't to comment on AESEL's procedures, that's a matter for the regulator. Instead I've considered the individual circumstances of this complaint. I find Mr S wanted to dispute the payment and he gave AESEL enough information to progress a claim on his behalf. If AESEL required Mr S to sign a declaration, it could have provided this at the outset of his claim.

Had AESEL progressed a section 75 claim for Mr S in March 2021 when he first disputed the payment, I think it would, more likely than not, have been successful. I say this because, as already set out above, I find the TV wasn't of satisfactory quality and, apart from an £80 voucher, he hadn't received a refund or replacement.

And I set out what I thought AESEL needed to do to put things right. I said:

1. The fault can't be repaired, so Mr S should receive a refund. He paid £299 for the TV, plus £3.95 delivery. He's received an £80 voucher from A and he has had use of the TV for three years. I think it's fair that he pays for this use, albeit it won't have been very enjoyable because of the fault. I think it's fair that AESEL should refund Mr S £122.95. This will mean Mr S has effectively paid £100 to use a TV with a faulty screen, which I think is fair.
2. If Mr S's account balance has remained above £122.95 since the payment to A, the account should be re-worked as if the transaction had not taken place. In that way, any resulting interest and charges will also be refunded. If the account balance has fallen below £122.95, AESEL should add interest at 8% simple a year to the refund from the date of payment to the date of the refund.
3. Mr S told us he had to pay an electrician £100 to instal the TV. I would ask him to provide evidence of this cost in response to this provisional decision and, provided enough evidence is received, I intend to order AESEL to reimburse him this cost, plus interest at 8% simple a year.
4. Mr S anticipates he will have to pay a similar cost for the TV to be uninstalled and I think AESEL should also reimburse him for this cost, on receipt of evidence from Mr S.
5. I think this matter could have been resolved much earlier had AESEL provided Mr S with better customer service and progressed his claim. I think it should pay Mr S £50 for the distress and inconvenience he's been caused.
6. Finally, AESEL should arrange to collect the TV at a convenient time for Mr S.

Mr S provided an invoice for the cost of installing the TV. He said he wants to replace the TV with a larger one which wouldn't be suitable for wall-mounting. So he wants AESEL to cover the costs of removing the socket, trunking, and wall mount, and making good the wall and re-painting it.

AESEL said it would accept my provisional decision outcome. But it said that:

- It would propose to calculate interest to a date two weeks after Mr S has agreed to the decision. This would allow it time to produce and post a cheque to Mr S.
- It can't arrange to collect the TV for disposal. But it would cover reasonable disposal costs. It suggested this would likely be around £20.
- It can't provide a tax deduction certificate, so would pay the interest award before the deduction of tax.

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.

In my provisional decision, I said why I thought AESEL should reimburse Mr S for the cost of installing the TV and I asked Mr S to provide evidence of what he paid. Mr S has now provided a copy of the invoice showing that he paid £191.00, and this is the amount AESEL will need to reimburse him.

In my provisional decision, I said I was minded to order AESEL to reimburse Mr S for the cost of uninstalling the TV. In response, Mr S said he anticipates the cost to uninstall the TV will be similar to the installation cost, plus there will be additional costs in making good the wall and repainting it. We asked Mr S for a further explanation, and it would seem he has had a change of mind and would like to buy a larger TV which won't be wall mounted. I'm sorry, but I can't ask AESEL to cover the cost of removing the wall mount and making good the wall. My aim is to put Mr S back in the position he'd be in if he'd been supplied with a TV of satisfactory quality. In that case, the wall mount and socket would still have been fitted and I can't order AESEL to cover the costs of removing it. The cost AESEL will need to cover is limited to any costs involved in taking the old TV down and fitting a new, like for like, TV. It's possible that, as the wall mount is already installed, Mr S won't incur any costs for this. But, should costs be incurred, he will need to provide evidence to AESEL for it to reimburse him.

AESEL says it will calculate the interest award up until two weeks after it receives notice that Mr S has accepted this decision. This will allow it time to send a cheque to Mr S. This I find this to be a fair and reasonable approach.

AESEL says it can't arrange to collect the TV but has agreed to reimburse Mr S for any reasonable costs of disposal which it suggests should be around £20. In the circumstances, I agree it's fair that AESEL should reimburse Mr S for any disposal costs he incurs. This cost shouldn't be limited to the £20 AESEL has suggested. But, if the cost is more than £20, Mr S should provide evidence of three quotes to AESEL to evidence that the cost incurred was in line with market rates and not unreasonable.

Finally AESEL says it can't provide Mr S with a tax deduction certificate and will pay the interest award gross. I can't order AESEL to pay the interest after the deduction of tax, so it will be for Mr S to report the gross interest to HMRC.

My final decision

My final decision is that I uphold this complaint. American Express Services Europe Limited should:

1. Refund Mr S £122.95.
2. If Mr S's account balance has remained above £122.95 since the payment to A, the account should be re-worked as if the transaction had not taken place. In that way, any resulting interest and charges will also be refunded. If the account balance has fallen below £122.95, AESEL should add interest at 8% simple a year to the refund from the date of payment up until two weeks after it receives notice that Mr S has accepted this decision. It's told us it will pay this interest gross, before the deduction of income tax.
3. Reimburse Mr S for the cost of installing the TV - £191.00. AESEL should add interest at 8% simple a year from the date of payment up until two weeks after it receives notice that Mr S has accepted this decision. It's told us it will pay this interest gross, before the deduction of income tax.
4. Reimburse Mr S for any costs incurred in removing the TV and fitting a replacement TV to the existing wall mount, on receipt of evidence from Mr S.
5. Reimburse Mr S for the cost of disposing of the TV, on receipt of evidence from Mr S.
6. Pay Mr S £50 for the distress and inconvenience he's been caused.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 8 February 2023.

Elizabeth Dawes
Ombudsman