

## **The complaint**

Mr Y complains about the way American Express Services Europe Limited (AESEL) handled his disputed transaction claim.

## **What happened**

Mr Y purchased an item online in May 2022 and paid using his AESEL card. When the item was delivered to Mr Y it was damaged and he refused to accept it and it was returned direct to the supplier. The courier responsible for returning the item lost it and it was never received by the seller. Mr Y discovered that the seller received compensation for the loss from the courier.

Mr Y tried to resolve things with the seller but was unable to do so. He says that as things stand, he's been charged £6,150 for an item he refused delivery of, and the seller has been refunded the full purchase price by the courier.

Mr Y contacted AESEL to raise a disputed transaction claim. The seller defended the chargeback and said it had evidence from the courier that the items had been delivered. AESEL said it wouldn't refund the cost of the item because the information provided by Mr Y didn't validate the claim. AESEL also said it wouldn't contact the seller because the item was lost in transit and Mr Y would have to contact the seller directly.

Mr Y was unhappy with the outcome of his chargeback claim and brought his complaint to this service. He wants the cost of the item refunded and compensation for the trouble and upset he's been caused.

Our investigator upheld the complaint. She said that Mr Y had evidenced that he had returned the item using the sellers contracted parcel service in accordance with the terms and conditions of the seller. The investigator also said that AESEL hadn't correctly considered Mr Y's claim under section 75 and said there had been a breach of contract because the seller hadn't refunded Mr Y for the returned item. The investigator said that AESEL should refund the sum of £6,150.

AESEL didn't agree. It said it didn't think Mr Y was entitled to a refund because the seller hadn't received the item. It said that Mr Y hadn't complied with the terms and conditions by declining the item and that he should have waited for the seller to communicate the shipping method for returning the item.

## **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.

Based on what I've seen, AESEL has considered the claim under both chargeback and section 75.

### Chargeback

Chargebacks are a voluntary scheme. How it works is that the card issuer checks the complaint against possible chargeback reasons to see what sort of evidence is required and under what timescales. Card issuers don't have to submit claims and will only do so if they believe that they have evidence which will back up a chargeback claim so it will be successful. This service expects card issuers to help if they can, but we don't expect them to raise a chargeback if there is little prospect of success.

In this case it appears that the seller disputed the chargeback on the grounds that the item had been delivered to Mr Y. AESEL appears to have determined the chargeback in the seller's favour on the basis that the item was lost in transit.

### Section 75

In certain circumstances section 75 gives a consumer a right to claim against a supplier of goods or the provider of credit if there's been a breach of contract or a misrepresentation. In order to uphold Mr Y's complaint, I would need to be satisfied that there's been a breach of contract or a misrepresentation and that AESEL's response to the section 75 claim wasn't fair or reasonable.

I've looked at all of the available evidence as part of my consideration of whether there's been a breach of contract here.

Mr Y agrees that the item was delivered to him but says he rejected the item at the point of delivery because it was damaged. Mr Y says the courier who delivered the item on behalf of the seller agreed to return the item to the supplier.

Mr Y has provided evidence to show that the item was lost in transit by the courier and that £6150 was paid to the seller as compensation for the lost item in July 2022.

Mr Y has also provided evidence to show that he requested a refund from the seller. There is no evidence to suggest that the seller has issued a refund.

I've reviewed the seller's terms and conditions. The following clauses are of particular relevance. I've quoted relevant extracts from the clauses rather than the full clause.

4.6 If the customer revokes the contract, then Watchmaster must refund all payments received from the customer (except for the cost of the return shipment of goods) within 14 days from the date on which the return goods have been received by Watchmaster.

4.8 After Watchmaster has received the revocation notice, Watchmaster will arrange for the return of the goods. Due to the regularly high value of the goods, the return is recommended via the shipping method explicitly communicated by Watchmaster by email. Watchmaster will provide the customer with a label for the return shipment for this purpose. The transport will then be carried out insured by a parcel service in the name of and on behalf of Watchmaster. The customer bears the cost of the return shipment as well as any taxes and fees. The purchase amount can only be refunded after receipt of goods by Watchmaster.

4.9 It is possible for the customer to return the goods via a parcel service of their choosing. In this case the customer is fully responsible for the return shipment including loss or damage in transit. The purchase amount can only be refunded after receipt of goods by Watchmaster.

4.10 Watchmaster may reject a refund until Watchmaster has received the returned goods or the customer has surrendered the goods to the parcel service contracted by Watchmaster.

AESEL has said that Mr Y isn't entitled to a refund because Watchmaster hasn't received the goods. It relies on clauses 4.8 and 4.9.

Clause 4.8 deals with circumstances where there has been a revocation notice. I haven't seen a revocation notice in this case. Mr Y rejected the goods at the point of delivery and the shipping method chosen by Watchmaster to send the goods to Mr Y said it would return the item to Watchmaster. I'm satisfied that for the purposes of clause 4.8, the item was returned via a parcel service in the name of and on behalf of Watchmaster. The purpose of clause 4.8 is to ensure that the item is insured during shipping and it's clear that in this case, the item was insured, because I've seen evidence that the seller claimed compensation from the parcel service when the item was declared lost in transit.

Clause 4.9 isn't relevant to the circumstances of this case because Mr Y didn't use a parcel service of his choosing. He used the parcel service chosen by the seller to send the item to him.

There's no clause which deals specifically with what happens if an item is lost in transit on its way back to the seller. But clause 4.10 states that Watchmaster may reject a refund until the customer has surrendered the goods to the parcel service contracted by Watchmaster. I'm satisfied that Mr Y surrendered the goods to the parcel service contracted by the seller when he rejected the item at the point of delivery. There's no dispute that the parcel service took the item back from Mr Y at the point of delivery.

Taking everything into account, I think the seller has breached the terms and conditions of the contract by failing to issue a refund to Mr Y pursuant to clause 4.10.

In the circumstances I don't think AESEL decided the section 75 claim fairly.

### **Putting things right**

To put things right AESEL must:

Refund £6,150 to Mr Y's credit card account

Rework the account as though the amount had been refunded from the date when AESEL first declined the first section 75 claim. This includes refunding any interest, fees or charges incurred by Mr Y as a result of the transaction remaining on the account

If refunding the transaction means that there is a credit balance on the account, AESEL should pay 8% simple interest per year on the credit balance from the date it would've arisen to the date it ceased to exist.

### **My final decision**

My final decision is that I uphold the complaint. American Express Services Europe Limited must take the steps I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr Y to accept or reject my decision before 11 October 2023.

Emma Davy  
**Ombudsman**