

## **The complaint**

Mr M complains that American Express Services Europe Limited (AESEL) didn't fairly deal with a claim he made under Section 75 of the Consumer Credit Act 1974 (the 'CCA') and a Chargeback claim in relation to a purchase he made with a supplier.

## **What happened**

Mr M ordered a product from a merchant, H, which he paid for using his AESEL credit card. When the product arrived he discovered it was damaged, so he returned it and H sent a replacement. This was also damaged in the same place, so Mr M sent the replacement product back to H and complained. He said he wanted a refund. Mr M said he packed up the parcel and sent it using a parcel courier service, C, on 18 January 2023.

On 23 January H responded by email saying that Mr M had sent a box of rubbish. Mr M disputed this and was upset with the customer service he received which he said was accusatory in tone. Mr M said he asked H what investigation it had done with C, but he said it refused to respond. He said he contacted C who informed him that it couldn't provide him with any information about the parcel, that information could only be provided to H, and they could not begin an investigation into the parcel unless requested by H. Mr M also said that C told him H had not asked to carry out an investigation.

Mr M initiated a subject access request to both C and H which he said confirmed that H had not asked C to carry out any investigation into what happened to the parcel. Mr M filed a police report and initiated a claim with another dispute resolution service, R. In May 2023 R said that H had agreed to settle the claim but after 40 days he still hadn't received a refund.

At the same time Mr M initiated a Chargeback/Section 75 claim with AESEL. He subsequently raised a complaint about the customer service he received during the Chargeback/Section 75 claim. In its final response AESEL rejected Mr M's claim so he brought his complaint to this service.

While the complaint has been with this service Mr M has been refunded as a result of his claim with R. Mr M said he wanted to continue with his complaint against AESEL due to its unacceptable customer service. He said the fact that H has eventually agreed to refund the purchase shows how unreasonable AESEL has been by refusing to help him enforce his Section 75 rights.

Our investigator concluded that AESEL hadn't done anything wrong in the way it handled Mr M's claim through both Chargeback and Section 75. Mr M didn't agree and asked for a decision from an 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.

I realise this will come as a disappointment to Mr M but having done so I agree with the

conclusions reached by the investigator for the reasons I've outlined below.

I trust Mr M won't take it as a discourtesy that I've condensed the complaint in the way that I have. Ours is an informal dispute resolution service, and I've concentrated on what I consider to be the crux of the complaint. Although I've read and considered the whole file, I'll keep my comments to what I think is relevant. If I don't comment on any specific point, it's not because I've not considered it but because I don't think I need to comment on it to reach the right outcome.

In deciding what I believe to be fair and reasonable in all the circumstances, I'm required to consider relevant law, rules, guidance, codes of practice as well as what I consider to have been good industry practice at the time.

AESEL had two possible routes for obtaining a refund for Mr M, a claim under the Chargeback process and a claim under Section 75.

AESEL initiated the Chargeback approach in the first instance. Chargeback is a transaction reversal made to dispute card transaction and obtain a refund if there is a problem with the product. It works by the credit card company withdrawing funds which were previously paid to the merchant and putting them back in the consumer's account. A merchant can dispute Chargeback if it can prove the Chargeback is invalid. It's important to say that Chargeback is not a legal right, there is no automatic right to it, nor is it a guaranteed method of getting a refund. The card scheme operator checks the nature of the problem against the possible Chargeback reasons to see whether the claim will be successful. If the credit card company feels the claim won't be successful it doesn't have to raise a Chargeback.

Mr M's AESEL card was on the American Express Network so it was American Express who set the rules for Chargeback disputes in his case. Our service is not able to look at complaints about the card network itself or how it runs its Chargeback scheme. AESEL raised a Chargeback for the disputed amount for the replacement product.

Mr M said he sent the replacement product back to H. H disputes this and has said it only received a package full of rubbish. Per H's terms and conditions Mr M was required to send back the product in its original conditions with labels attached. Mr M said he did this. H defended the Chargeback. AESEL said the documents it received from H supported its case and Mr M failed to provide his own supporting documents.

Mr M said while he had proof of sending the item the kind of proof that AESEL was asking for was unreasonable. He said the only conclusive evidence he could've provided would've been an uninterrupted continuous video from packing the parcel to presenting it to the courier. He said no reasonable person would take a video like this and AESEL's customer services team was asking him to prove something that is effectively unprovable.

When the evidence is incomplete, inconclusive, or contradictory, I must decide based on the balance of probabilities – that is, what I think is most likely to have happened given the available evidence and the wider circumstances. I'm not disputing Mr M's testimony and I can fully understand his frustration that the product went missing. And he did the correct action by reporting it to the police.

AESEL said the Chargeback process is evidence based. It said the process will gather information to determine if the contract agreed between the parties has been met. It said in this instance Chargeback was requested under the Chargeback code which covers merchant refunds for returned goods. AESEL provided the relevant rules to this service:

- *"If the goods are claimed to be returned – the acquirer must provide proof refuting*

*cardmember's claim that goods were returned to the S/E ..."*

AESEL said H provided a valid response to the Chargeback attempt.

As I mentioned above my role is to determine whether AESEL's acted fairly in how it handled Mr M's claim. I do understand Mr M's frustration and I'm not disputing he sent the replacement product back and not rubbish. And while I agree that providing such a video wouldn't be reasonable I can't see that AESEL has done anything wrong in the way it acted. It asked both parties for evidence and it received evidence from H. It then based its decision on the evidence provided. I've looked at the evidence it provided and I'm satisfied that it was fair for AESEL to rely on it.

Mr M has queried the Chargeback rules AESEL has followed. He has said they relate to Australia and not the UK. I've looked at the rules AESEL has followed and it appears they are international.

The other way that AESEL could have used to refund Mr M would be to raise a Section 75 claim. Section 75 protects consumers who buy goods and services on credit. It says in certain circumstances the finance provider is legally answerable for any misrepresentation or breach of contract by the supplier. Mr M is not happy that AESEL didn't proceed to raise a Section 75 claim. As the investigator said it's possible AESEL didn't do so because it didn't think there had been a breach of contract or misrepresentation by H.

To be able to uphold Mr M's complaint I would need to be satisfied there's been a breach of contract or misrepresentation by the merchant and that AESEL's response to Mr M's claim under Section 75 wasn't fair or reasonable. But I'm not determining the outcome of Mr M's claim under Section 75 as that would be for a court to decide. I'm deciding whether AESEL acted fairly when it dealt with Mr M's claim.

Mr M provided the evidence he had which included delivery receipts and tracking notices. For a valid claim to be made, AESEL would need to have enough evidence to show that there had been a breach of contract, i.e. that H received the actual product back. And in the absence of sufficient evidence to contradict the information provided by H, I can't fairly conclude this is the case.

I've seen correspondence between AESEL and H and I'm satisfied it investigated the complaint and sought evidence of breach of contract. I understand this will disappoint Mr M but I'm satisfied AESEL has acted fairly and reasonably when dealing with his claim and I won't be asking it to do anything further.

Mr M has said H breached its contract with him because the goods were faulty. And he exercised his right to reject the goods. He said he discharged his duty under law to make the goods available for collection by the supplier. And he said he provided a police statement confirming he gave the goods to the supplier's courier. I do understand what Mr M is saying and I'm not disputing he sent the goods back to H in good faith. As I mentioned above we are an informal service and it's my role to decide if AESEL has acted fairly when it handled his complaint. H provided proof refuting the goods were returned to it and I think it was fair and reasonable for AESEL to rely on that information provided by H.

I'm pleased to see that Mr M has received a refund from H through the other dispute resolution service, R.

### **My final decision**

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 27 February 2024.

Maxine Sutton  
**Ombudsman**