

## **The complaint**

Mr M complains about the way American Express Services Europe Limited (AESEL) handled his request for money back in respect of an item he bought using his AESEL credit card.

## **What happened**

On 30 December 2020 Mr M bought a piece of furniture from a supplier I'll call A. He paid £319.20 using his AESEL credit card. The payment was made via a third-party payment processor under its 'guest checkout' option.

Mr M said that in early May 2021 he noticed the weld on the bottom right of the door had failed and caused it to drop. He contacted A, provided photographs of the problem and asked it to arrange collection of the furniture and a full refund.

A responded and confirmed that if Mr M packaged the furniture appropriately it would send him a postage label and then refund him.

Mr M said he didn't receive the postage label and when he contacted A it changed what it was it prepared to do to help him and said it would send a new door rather than provide a refund.

Mr M contacted A again in July 2021 and asked it for a 'brand new replacement'. A responded and asked Mr M to send the door to its main warehouse after which it would send a replacement. Mr M said it never sent a postage label and then refused to provide a refund when he asked for one.

Mr M asked AESEL to step and help him get a refund at this point.

AESEL considered its liability to Mr M under Section 75 Consumer Credit Act 1974 but it didn't think he had a valid claim. It said because Mr M paid A via a third-party payment processor and not directly, the necessary criteria under Section 75 for there to be an agreement between the debtor, creditor and supplier had not been met.

AESEL also said Mr M hadn't provided enough evidence that there had been a breach of contract. It said the damage appeared to have been identified four months after Mr M bought the furniture and not raised until after six months.

Dissatisfied Mr M referred his complaint to this service.

An investigator thought Mr M's complaint should be upheld. He said the involvement of the third-party payment processor did not disrupt a debtor, creditor, supplier ("DCS") agreement. And he thought the photographs Mr M had provided showed the cabinet was not of satisfactory quality – in breach of the term implied by the Consumer Rights Act 2015 that it would be. The investigator asked AESEL to pay Mr M £319.20 plus compensation of £100 for the inconvenience he'd been caused by AESEL's handling of the matter.

AESEL didn't respond to the investigator's assessment so the complaint has been referred

to an ombudsman for review.

### **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 deciding what is fair and reasonable in the circumstances I am required to take into account relevant legislation, rules and guidance. I think relevant legislation in this case includes Section 75 Consumer Credit Act 1974 ("section 75") and the Consumer Rights Act 2015 ("CRA").

Section 75 provides that subject to certain criteria the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services.

One of those criteria is that the claim must relate to a transaction financed by a debtor-creditor-supplier agreement. In other words, given Mr M's claim here, AESEL must have financed a transaction between him and A.

AESEL said it didn't finance a transaction between Mr M and A but rather it financed one between Mr M and the third-party finance provider.

In this case, Mr M said the credit card payment went to A via the payment processor under its guest checkout process and he did not have an account with the payment processor. He has provided confirmation of this from the third-party payment processor and I accept what he says about this.

So, I think that the payment in this case was made under arrangements of the required kind. This is because the payment processor in this case is a recognised participant in the same card scheme as A, and this model of recruiting and paying suppliers is a common and accepted commercial practice which has evolved over time. AESEL would have contemplated, when agreeing to give Mr M a credit card, that the market for payment services would develop over time and that the card would be used to pay suppliers through the card scheme via any established method which had since emerged. This is one such method. Due to the mutual participation of all parties within the card scheme, therefore, there was a valid debtor-creditor-supplier agreement in this particular case.

I've considered therefore whether there likely was a breach of contract by A.

The CRA implied terms in Mr M's contract with A that any goods supplied to him would be of satisfactory quality. What is satisfactory depends on what a reasonable person would consider satisfactory taking account of the price and description. Relevant aspects of satisfactory quality include things like durability and freedom from minor defects.

Mr M said the welding of the bottom part of the furniture door failed after five months and this caused the glass to drop. The photographs Mr M has provided match his description of the problem and I'm satisfied from these there appeared to be a fault with the furniture. I don't think Mr M would reasonably have expected the furniture to break in the way it did after five months given how much he paid for it. And no evidence has been put forward to support an argument that this happened through misuse. So, it doesn't appear the item was sufficiently durable. I think therefore that A breached the implied term in the contract that the goods supplied to Mr M would be of satisfactory quality.

Taking all of this into account, I find AESEL treated Mr M unfairly by declining to meet his

claim in any way.

To put things right, I'm conscious A might ordinarily have had an opportunity to fix the or replace the furniture and that this might therefore have been the fair thing to require AESEL to arrange.

However, given the time that has now passed, given it's not clear that A ever sent the postage label to Mr M to enable him to return the goods for a repair or replacement, and given it's not clear whether anyone other than A could repair or replace the item, such a remedy appears to have its complications now.

The CRA sets out that where a consumer has requested repair or replacement and the supplier hasn't carried this out in reasonable time, that consumer has a right to reject the goods and ask for a refund.

All things considered therefore, I think the fairest thing here is for AESEL to treat Mr M as if it had met his claim for a refund and pay him £319.20 plus interest from when it declined the claim until the date of settlement.

AESEL should also make arrangements with Mr M for the collection or disposal of the cabinet at no cost to him. If AESEL simply wishes to pay Mr M his costs of disposal (subject to him providing it with proof he has incurred these), this is reasonable.

The investigator recommended that AESEL pay Mr M £100 compensation for distress and inconvenience. I can make an award of compensation for distress and inconvenience, but in this case that would only be in respect of AESEL's actions. Looking at matters here, AESEL responded to Mr M's request for a refund within a month, which I find was a reasonable period of time. And while I haven't agreed with its position in respect of a claim under section 75, AESEL was entitled to its view on the claim. It would not be fair of me to make an award for distress and inconvenience in this case simply because of the view AESEL took on Mr M's claim, particularly given some of the issues involved were not straightforward. I do not therefore require AESEL to pay compensation to Mr M for distress and inconvenience

### **My final decision**

For the reasons I have explained, I uphold Mr M's complaint. To put things right American Express Services Europe Limited (AESEL) must:

- Make arrangements with Mr M for the collection or disposal of the cabinet at no cost to him.
- Pay Mr M £319.20 plus simple interest of 8% per year on that amount from 14 April 2022 until the date of payment\*

\*If American Express Services Europe Limited (AESEL) considers that it's required by HM Revenue & Customs to deduct income tax from that interest, it should tell Mr M how much it's taken off. It should also give Mr M a tax deduction certificate if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 24 October 2023.

Michael Ball  
**Ombudsman**