

The complaint

Mr J complains that American Express Services Europe Limited (AESEL) did not treat him fairly when he asked it to help him obtain refunds for goods he bought using his AESEL charge card.

What happened

While he was overseas Mr J bought branded items from two shops. He subsequently found out that the brands do not sell their goods in that country. Mr J provided AESEL with confirmation of this point from one of the brand owners.

Moreover the goods themselves were branded and marketed one way but the receipts the shops gave him contain different details. Therefore Mr J thinks he was misled about the authenticity of the goods and wants his money back.

Mr J was unable to obtain refunds from the shops he bought the goods from, although he tells us he tried to get refunds. But when he contacted the shops each time he was told the manager was out and only the manager could authorise a refund. Mr J considered he was getting the run-around from the shops and would never be able to obtain a refund from them, therefore he complained to AESEL.

AESEL indicated that it could try to get Mr J a refund under a process known as chargeback (I'll explain the ins and outs of chargeback in the "what I've decided and why" section below). The reason for the chargebacks would be the goods sold to Mr J were not as described. But on this occasion AESEL said the requirements for a chargeback had not been met, in that Mr J had not complied with the shops' exchange policies (which seemed to be the same). Specifically, AESEL told Mr J that the shops provided "stronger" evidence than Mr J in response to the chargeback claims, (this stronger evidence being the exchange policies). Therefore, there was no realistic prospect that it could obtain refunds under the chargeback process.

Dissatisfied, Mr J complained to our service. Mr J complained about AESEL's handling of the chargeback in general. He also highlighted that in his opinion AESEL had given him inconsistent information. In particular, at first it told him that if his money was refunded to him under chargeback this decision could not be reversed and then it went back on this.

One of our investigators looked into Mr J's complaint. Our investigator recommended that Mr J's complaint be upheld.

Mr J accepted our investigator's recommendation AESEL did not. In rejecting our investigator's recommendation AESEL relied on its previous stance. It also said Mr J had not proved that he tried to return the goods, but it did not say, when we asked, what specific proof it would have required over and above what he'd already provided, and why it did not ask Mr J for this. Later AESEL said in any event Mr J had not demonstrated that the goods sold to him were not as described.

AESEL asked that an ombudsman review Mr J's complaint.

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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

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.

As Mr J paid for the goods using his charge card and wanted a refund, I've thought about whether AESEL dealt with his request fairly. The chargeback process is relevant in this case.

Chargeback is a way in which payment settlement disputes are resolved between card issuers and merchants. They are dealt with under the relevant card scheme rules. In this instance the shops were the merchants.

In certain circumstances the process provides a way for AESEL to ask for a payment Mr J made to be refunded. Those circumstances include where goods are not as described by the shops Mr J paid.

There is no guarantee that a chargeback will succeed, and it can be opposed or defended by the financial institution which received the card payment (it will represent the merchant), who may not agree that the chargeback is valid. If no side to a chargeback is willing to concede then the card scheme itself can be asked to make a ruling by a process known as arbitration.

I would expect a charge card provider, approached by a customer looking to dispute a card payment for goods, to consider whether it had valid grounds for raising a chargeback, and to do so if it would appear that a chargeback would both be compliant with the card scheme rules and have reasonable prospects of succeeding. As part of its approach I'd also expect the charge card provider to tell its customer precisely what information was needed, select the right chargeback reason code and proceed to arbitration should this be appropriate.

Therefore it follows that if I am to order AESEL to refund all or part of the cost of the goods, I must be satisfied that it acted incorrectly in the way it made a chargeback claim under the chargeback regulations. I've looked at what AESEL did, and the information that I've got about relevant regulations and I think AESEL acted incorrectly at times. I'll explain why I say this below.

Mr J was not seeking to exchange the goods, rather he wanted to return them for a refund. Moreover, there is nothing as far as I am aware that says that in order to comply with the chargeback rules Mr J would have to comply with an irrelevant policy. AESEL has not provided information to allow me to investigate this point further despite being asked to do so.

In the circumstances, it is unclear to me why AESEL did not take the chargeback process as far as it could. On the face of it there was a substantial difference between what the shops said they were selling to Mr J and what he actually received. It is my understanding that the chargeback rules would have protected Mr J in these instances by allowing him the opportunity to make his case and seek refunds.

Moreover, I find that AESEL did not always make it clear to Mr J what information it needed. I also find that it seemingly did not always take on board the information that he did provide. I am satisfied that in behaving like this AESEL treated Mr J unfairly.

It follows, that taking into account the relevant regulations and the likelihood that Mr J's claims would have succeeded, I think AESEL acted incorrectly and therefore it is fair and reasonable that AESEL refund Mr J for the total amounts he paid to the shops which appears to be £531.73 + £183.52 = £715.25. As far as I am aware none of these sums have been refunded to Mr J already.

I also find that AESEL's behaviour most likely caused Mr J unnecessary distress and inconvenience in that it did not handle the chargeback appropriately at times as I've mentioned above. I am satisfied that it is fair and reasonable to make an award for this. I find that £100 is an appropriate amount for this award.

However, based on the information I've got available to me, I'm not persuaded that AESEL did not make it clear that a refund granted under the chargeback process could be reversed. And, in any event, even if one person or more, mistakenly said this to Mr J it does not mean AESEL was obliged to stick to this no matter what.

My final decision

My final decision is that American Express Services Europe Limited (AESEL) must:

- Refund the total amount that Mr J paid to the shops for the items that were the subject matter of the chargebacks and treat Mr J's account as if the refunds had been made at time the chargebacks were raised.
- Pay Mr J £100 for distress and inconvenience.

It must pay the compensation within 28 days of the date on which we tell it Mr J accepts my final decision. If it pays later than this it must also pay interest on the compensation from the date of my final decision to the date of payment at the rate of 8% a year simple.

If it considers it is legally required to deduct income tax from that interest, it must send a tax deduction certificate with the payment so that Mr J can reclaim the tax if he is able to.

Mr J should refer back to AESEL if he is unsure of the approach it has taken and both parties should contact HM Revenue & Customs if they want to know more about the tax treatment of this portion of the compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 16 November 2023.

Joyce Gordon
Ombudsman