

## **The complaint**

Mr N complains about American Express Services Europe Limited's (who I'll call AESEL) handling of his chargeback claim.

## **What happened**

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my decision.

## **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 know it will disappoint AESEL, but I don't think they've been fair here.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with a credit card, as is the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

It may also be possible to make a chargeback claim. That's a voluntary scheme, but I think it would be fair for AESEL to consider such a claim if, as is the case here, there would appear to be a reasonable prospect of success.

I can't see that AESEL have considered the claim under section 75, but they do appear to have considered the claim under the chargeback scheme. They have rejected it but have paid Mr N £200 in compensation for the distress and inconvenience they have caused. I don't think that was fair.

The Consumer Rights Act (2015) is the relevant legislation. It says that the TV should have been of satisfactory quality when supplied. And that the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. The relevant

legislation says that the consumer has 30 days to reject goods that are of unsatisfactory quality and if they do so the supplier has no right to repair them.

Mr N bought his TV on 2 March 2023, and I can see he complained to the supplier that it wasn't working on 9 May 2023, 68 days later. There's no dispute that the TV had a fault and was, therefore, of unsatisfactory quality. In those circumstances, he was too late to invoke his short term right to reject the goods, and the relevant legislation allowed the supplier one opportunity to repair them.

Had AESEL explained that to Mr N when he raised his claim with them, I would have been likely to think their response was reasonable. I say that because I can see the supplier was prepared to repair the TV.

But that's not what Mr N was told when he called AESEL in May 2023. During that call the operator clearly explained that the claim had been settled in Mr N's favour, the £1,049 would be refunded to his account by 29 May 2023, and that he was free to buy a replacement. Mr N was keen to check the advice and make sure that even if the supplier changed their mind and challenged the refund, there would be no change of mind from AESEL. The operator confirmed that wouldn't happen and, so, I can understand why the next day Mr N went ahead and bought a replacement TV.

AESEL have accepted that mistakes were made during that call, and they've offered to pay Mr N £200 in compensation for any distress or inconvenience caused. Mr N has subsequently arranged for the supplier to repair the original TV under warranty, but he has no use for that TV now and is out of pocket because he's not been provided with a refund. In the circumstances, I think the fairest resolution would be for AESEL to arrange to take the TV back and to restructure the account as if the transaction never took place. If this results in a credit balance AESEL should pay 8% interest on this amount from 16 May 2023, when they gave him the wrong advice, until the date the complaint is settled.

### **Putting things right**

AESEL should put things right in the way I've set out above and detailed below.

### **My final decision**

For the reasons I've given above, I uphold this complaint and tell American Express Services Europe Limited to:

- Take the TV back at no cost to Mr N.
- Restructure the account as if the transaction never took place and if that results in a credit balance AESEL should pay 8% interest on that amount from 16 May 2023, when they gave him the wrong advice, until the date the complaint is settled.
- Remove any adverse reports they may have made to the credit reference agencies in respect of this transaction.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr N to accept or reject my decision before 19 February 2024.

Phillip McMahon  
**Ombudsman**