

## **The complaint**

Miss A complains that American Express Services Europe Limited (AESEL) won't refund a payment she made using her credit card.

## **What happened**

In August 2023, Miss A bought a bottle of perfume for £445 using her AESEL credit card. When it was delivered Miss A says the bottle had leaked. She contacted the merchant for a refund who asked to inspect the bottle. The merchant concluded that the bottle had not been damaged before it was sent or during transit, so it declined to provide a refund. Miss A said when she received the bottle back again it had leaked even more. She then approached AESEL for help in getting a refund.

AESEL considered whether it might be liable under section 75 of the Consumer Credit Act 1974 ("section 75") but concluded there was insufficient evidence of a breach of contract or misrepresentation by the merchant. Miss A complained to AESEL about its decision not to refund her, but AESEL didn't uphold her complaint.

Our investigator didn't recommend the complaint be upheld. He didn't think AESEL had acted unfairly in not providing a refund.

Miss A didn't agree, so the complaint has been passed to me for a 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.

The general effect of section 75 is that if Miss A has a claim for breach of contract or misrepresentation against the supplier of goods or services, she can bring a like claim against AESEL as the provider of credit. There are certain other requirements that need to be met in order for a section 75 claim to be made. For completeness, I'm satisfied they are met here.

Miss A says that the merchant was in breach of contract as it sent her a faulty perfume bottle. She has provided a photograph of the bottle inside the box it came in with what looks like some liquid droplets on the inside of the box. She also contacted the manufacturer of the perfume who said it was possible that the perfume may have leaked during transit.

AESEL concluded that what Miss A had provided wasn't sufficient to demonstrate a breach of contract by the merchant and it therefore didn't consider it had any liability to provide Miss A with a refund. Having considered the available evidence, I'm satisfied that AESEL hasn't acted unfairly or unreasonably in not providing Miss A with a refund.

While Miss A has an email from the manufacturer to say it's possible the perfume could have leaked in transit, the manufacturer has not inspected the perfume bottle. Further, its comment appears to have simply been a generic statement about what could have been

possible rather than stating that is what happened in this specific instance. Miss A says the bottle is damaged and was damaged further when it was returned by the merchant. However, I've not seen anything to persuade me the bottle was damaged and that even if it was, that any damage more likely than not happened prior or during delivery to Miss A.

Based on the available evidence, I can't fairly conclude that AESEL reached an unreasonable outcome in not providing her with a refund under section 75.

It's not clear whether AESEL attempted a chargeback as well as reviewing the refund under section 75. But even if it didn't, I can't see that a chargeback would have had any reasonable prospect of success for broadly the same reasons I've set out above. Further, it appears from the emails the merchant sent to Miss A that it would have robustly defended any attempted chargeback.

I accept it's possible that Miss A received the bottle damaged, but it's equally possible it was damaged after it was received. I realise this will be disappointing to Miss A, but I've not seen enough to persuade me that AESEL acted unfairly or unreasonably in not refunding her.

### **My final decision**

For the reasons given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss A to accept or reject my decision before 27 August 2024.

Tero Hiltunen  
**Ombudsman**