

The complaint

Mr O complains that American Express Services Europe Limited (AESEL) declined his claim for a refund when he received goods that he said weren't as described.

What happened

Mr O purchased goods from a merchant on 2 September 2023, with the order being made by email and the payment by phone. He said that the goods received were not as advertised. Mr O contacted the merchant and was told he could return the goods. He did this and was told that a store credit was available. He said a store credit was never discussed and he wouldn't want to buy from the same merchant given the issues he had experienced. Mr O raised a dispute with AESEL and says that on a call (9 October 2023) he was told that if he could provide evidence that he had returned the goods then he would receive a full refund. However, after providing the evidence, he didn't receive a refund.

AESEL said that Mr O's claim was rejected as the merchant had advised that its returns policy said that goods can be returned for a credit note or exchange and all goods needed to be returned recorded delivery. It said the merchant had offered a store credit in line with its policy and Mr O had provided insufficient evidence for re-disputing the charge.

Mr O referred his complaint to this service.

Our investigator didn't uphold this complaint. She explained the process for a chargeback and said that the merchant had defended the chargeback. She said that Mr O had been provided with a store credit in line with the merchant's terms and conditions and that the merchant had provided evidence to show the goods supplied matched the description. Therefore, she didn't think that AESEL was wrong not to pursue the chargeback further.

Regarding Mr O's claim under Section 75 of the Consumer Credit Act 1974 (s.75), she noted that Mr O said the goods weren't as described but didn't find that evidence had been provided of this. She acknowledged Mr O's comment about not being provided with the terms and conditions but said the merchant's website had these available. When Mr O returned the goods, he was provided with a store credit in line with the terms and conditions and so she didn't find that there had been a breach of contract. Therefore, she didn't find that AESEL acted unfairly by not raising a s.75 claim.

Mr O didn't agree with our investigator's view. He reiterated that AESEL had told him he would receive a refund if he provided proof the goods were returned. He said the merchant's terms and conditions were never explained to him. He said that the merchant had accepted that some goods weren't as described and while a credit note was offered, he didn't want to accept this given he didn't want to purchase from the merchant again. He also noted the credit note deducted the costs of shipping.

Our investigator listened to the call on which Mr O had said he was told he would receive a refund. She noted that Mr O was asked if he had returned the goods, and this was confirmed, and the agent asked for evidence of this to be provided to help with re-billing. Our investigator explained that this request was part of the chargeback process. She reiterated

that the merchant defended the chargeback with the terms and conditions and so she didn't change her outcome.

Mr O didn't accept our investigator's view. As a resolution hasn't been agreed this complaint has been passed to me, an ombudsman, to issue 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.

I appreciate that Mr O is unhappy with his experience after buying goods costing £1,344 from a merchant. But as has been explained my roll isn't to address any complaints with the merchant but instead to assess whether AESEL did anything wrong or treated Mr O unfairly when dealing with his disputed transaction claim.

Mr O purchased goods from a merchant which he said weren't as described. He contacted the merchant on receipt of the goods with his concerns. Discussions occurred about the goods that had been received and the merchant offered Mr O different options to resolve the issue including returning any unopened items to receive a store credit. Mr O opened the items as he said this was what was suggested and then contacted the merchant about a return. The goods were collected and a store credit applied for £1,204 (the amount paid by Mr O less the costs of transporting the goods). Mr O wasn't happy with this and contacted AESEL about a refund.

Following Mr O raising his dispute, AESEL contacted the merchant about the chargeback. As has been explained by our investigator, chargeback is a voluntary scheme but we would consider it good practice for a chargeback to be attempted where the right exists and there is a reasonable chance of success. In this case Mr O said the goods supplied weren't as described. He returned the goods and provided evidence of this. However, the merchant defended the chargeback stating it had provided a store credit in line with its terms and conditions. I note Mr O's comment about not being made aware of the terms and conditions, but I can see these are available on the merchant's website. As the merchant did provide Mr O a credit in line with the terms (which stated the cost of delivery would be deducted) I do not find that AESEL was wrong not to pursue the chargeback further.

I have also considered whether Mr O had a valid claim under s.75. Under s.75 the borrower under a credit agreement has, in certain circumstances, an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the merchant of goods or services. In this case Mr O said the goods supplied were not as described. However, having looked at the evidence provided, while I can see that Mr O wasn't happy with the goods received, I do not find the evidence shows they were misrepresented. When Mr O raised his concerns, he was provided different options and decided to return the goods. As he was then provided with a credit in the line with merchant's terms, I do not find that I can say there was a breach of contract. Based on this I do not find that I can say AESEL was wrong not to pursue a s.75 claim.

Mr O also complained that AESEL told him he would be provided with a refund if he provided proof of returning the goods, which he did. I have listened to the call on which this was discussed. Mr O confirms that the return has happened, and he is told that evidence of this will help with a refund but a refund isn't promised. The agent said that when the evidence had been provided this would be checked with the merchant. In this case the merchant defended the claim.

Taking everything into account, I do not find that I can say AESEL did anything wrong or

treated Mr O unfairly by declining his claim. Therefore I do not uphold this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr O to accept or reject my decision before 11 November 2024.

Jane Archer
Ombudsman