

## **The complaint**

Mrs S complains that American Express Services Europe Limited (“AESEL”) did not handle her claim properly in respect of goods which she bought but were not delivered.

## **What happened**

On 23 October 2023 Mrs S ordered some paint from a merchant. She then asked that changes be made, but the merchant told her it had been manufactured and dispatched. The merchant says that it tried to deliver the paint twice but without success. Mrs S asked the merchant for a refund but it refused saying that the order was non-refundable as the paint had been manufactured.

Mrs S contacted AESEL to say her order hadn’t been delivered and she submitted documents in support of her claim. AESEL made a chargeback and the merchant defended the claim supplying evidence which it said contradicted Mrs S’ claims. AESEL wrote to Mrs S saying that the merchant had provided proof of attempts to deliver the goods and said that the order was non-refundable.

On 12 December Mrs S sought to reopen the chargeback but this was closed on 18 December as no additional evidence was supplied. Mrs S has told this service that she went into hospital at this time and she was unable to provide additional information.

AESEL rejected Mrs S’ complaint and she brought the matter to this service. It was considered by one of our investigators who didn’t recommend it be upheld. He explained that his role was to consider the actions of AESEL and he set out in some detail in his view and in numerous emails why he did not consider AESEL had done anything materially wrong.

Mrs S did not agree and asked that the complaint be considered by an ombudsman.

## **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 have every sympathy with Mrs S but I do not consider I can uphold her complaint. I will explain why.

I appreciate the strength of feeling shown by Mrs S in pursuit of both her claim and her complaint. She has supplied a significant amount of material and I want to assure Mrs S, if I don’t address every point that’s been raised, it’s not because I haven’t thought about it. I have considered everything that’s been said and sent to us. But I’m going to concentrate in this decision on what I think is relevant and material to reaching a fair and reasonable outcome. That means I must address whether AESEL did anything wrong in handling the claim. I would add that my role does not allow me to address any complaint against the merchant.

When a consumer has a dispute with a merchant there are two possible routes whereby

redress can be obtained. The first is via a chargeback and the second is via a claim under section 75 Consumer Credit Act 1974 ("s.75")

Chargeback is a process that is provided by the Card Scheme. It allows customers to ask for a transaction to be reversed if there's a problem with the goods or services they've paid for. There's no automatic right to a chargeback. Nor is chargeback a guaranteed method of getting a refund. The Card Scheme checks the nature of the problem against the possible chargeback reasons to see whether the claim will be successful. If the bank feels that a claim won't be successful, they don't have to raise a chargeback.

It is important to note that this is a voluntary process and AESEL is not obliged to make a chargeback. However, I would expect it to have done so in the circumstances of this case. It is reliant on the information provided by the consumer and it took what Mrs S had said and the documents she provided and used this to make the chargeback.

The merchant responded disputing Mrs S' claim and provided documentation in support of its position. AESEL notified Mrs S accordingly. She asked that it make a second chargeback but did not provide any additional grounds and AESEL decided to close the case. I have not seen that AESEL was aware that Mrs S was in hospital around this time. In any event I do not consider it likely that an appeal against the refusal of the chargeback would have been successful.

I must make it clear that AESEL does not make the decision to uphold or reject a chargeback. It simply makes a request on the customer's behalf and It is not responsible for the outcome. I cannot say that it did anything wrong in the handling of the chargeback.

I gather AESEL raised the possibility of a s.75 claim. S. 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under s. 75 the consumer has an equal right to claim against the provider of the credit or the retailer providing the goods or services, if there has been a misrepresentation or breach of contract on the supplier's part.

For s 75 to apply, the law effectively says that there has to be a:

- Debtor-creditor-supplier agreement *and*
- A clear breach of contract or misrepresentation by the supplier in the chain.

There is no dispute that the chain is intact. However, it only applies to goods purchased costing more than £100. Mrs S paid £237.48, but the individual goods she bought were all below £100 and so s.75 has no effect. Mrs S has said that the suggestion by AESEL that she make a s.75 claim wasted her time and affected her opportunity to appeal the chargeback.

I don't believe it was unreasonable for AESEL to have referred Mrs S to s.75. The overall transaction was in excess of £100 and without delving into the details it was reasonable for it to suggest this route be considered. Unfortunately, it transpired she had no claim. As I have pointed out I do not consider there was any realistic chance of the chargeback succeeding even with the later evidence Mrs S has supplied and I don't believe any damage was done by the time taken to consider s.75.

I appreciate Mrs S will be disappointed with my decision but I do not consider I can uphold her 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 Mrs S to accept or reject my decision before 1 January 2025.

Ivor Graham  
**Ombudsman**