DRN-4790433

The complaint

Mr S complains about the decision taken by American Express Services Europe Limited (AESEL) to decline his claim for compensation for what he says was a failed remap, or a poor remap, of his car.

What happened

In December 2022, Mr S had his car remapped, to enhance its performance, by a company that I will call "S".

The cost of the remap was £265. Mr S paid S £25 on 14 December 2022 using his AESEL credit card and a company that I will call "R" £240 on 16 December 2022 using his AESEL credit card.

Shortly after the remap Mr S says the car wouldn't start and became temperamental.

Mr S says that in January 2023 he emailed S to let it know about the issues with the car, but it didn't respond.

Mr S says that in January 2023, after the car started fuming white smoke, he took it to a garage that I will call "M" who charged him £905 for various repairs. Mr S says that M confirmed to him that the remapping (by S) had caused the need for £905 of repairs to be undertaken.

Following the above repairs Mr S contacted S again. But receiving no response from S, Mr S contacted AESEL to request a refund of £1,170 (£265 plus £905). Mr S asked AESEL to consider his claim for a refund under Section 75 of the Consumer Credit Act 1974 ("Section 75").

Mr S says AESEL told him that it wouldn't consider his claim under Section 75 but that it would consider raising a chargeback on his behalf. However, Mr S says he insisted a claim under Section 75 was considered by AESEL as he was claiming for consequential losses. Mr S says he repeatedly sent dispute forms to AESEL alongside evidence, however it didn't look at his claim. Mr S finally complained to AESEL, and it told him that it hadn't received his forms.

Mr S' complaint was considered by one of our investigators who came to the view that AESEL had done nothing wrong in declining Mr S' claim, but its poor handling of that claim warranted an award in Mr S' favour of £100.

Neither party agreed with the investigator's view, so the complaint has been passed to me for review and 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.

When a consumer approaches their credit card issuer about a problem with a payment made using their credit card, there are two avenues via which the business might be able to help.

The card issuer can try to reclaim the amount (or part of the amount) the consumer paid on their card, via the dispute resolution mechanism operated by the card scheme and which is often known as "chargeback". It can also consider honouring a claim under Section 75. I will consider each of these mechanisms in turn below.

Before doing so, I think it would also be helpful to explain that while I understand Mr S is unhappy with S and its actions, I can only look at the actions of AESEL and its handling of Mr S' claim to it as a financial service provider. So, while I want to assure Mr S I've read everything he's submitted and while I acknowledge the impact this issue has had on him, I can't look into nor comment on the actions of S in this decision.

Chargeback

Chargebacks are governed by rules set by the card scheme to which the consumer's card belongs – in this case that's AmEx.

While a consumer can't require their card issuer to attempt a chargeback, as it isn't a right, our Service does consider it good practice to do so in certain circumstances.

I can't see evidence of AESEL attempting a chargeback here. But given that Mr S says he wanted, and has always wanted, his claim considered under Section 75 (with a chargeback not being raised), the quantum of his claim (which includes a claim for consequential losses) and the restrictive nature of the chargeback reason codes available I don't think AESEL did anything wrong, in the particular circumstances of this case, in not raising a chargeback on Mr S' behalf.

Section 75

Section 75 allows consumers who have purchased goods or services using a credit card, to claim against their credit card issuer in respect of any breach of contract or misrepresentation by the supplier of those goods or services, so long as certain conditions are met.

One condition which needs to be met for Section 75 to apply to a transaction is the claim must relate to an item, or service, with a cash price of over £100 and no more than £30,000. The cash price here met this condition. I say this because Mr S has provided evidence to show that the service cost £265 and he used his AESEL credit card to fund this purchase.

A further condition is that there needs to be what is known as a debtor-creditor-supplier ("DCS") arrangement in place. I'm satisfied that is the case here. As Mr S (debtor) paid for the services by S (supplier), using his credit card with AESEL (creditor).

I can see that Mr S has made attempts to make a claim under Section 75 for the cost of the remapping and the additional losses he says he incurred as a result of that remapping. AESEL has said that it didn't receive any information from Mr S in support of his claim. But I've seen evidence that Mr S sent information to AESEL and to the correct email address. It isn't clear why AESEL says it hasn't received this information, however, I'm satisfied that on balance it did and that it should have considered Mr S' claim.

Our usual approach in circumstances like this would be to look at what would likely have happened if AESEL had investigated the Section 75 claim. In order to do that, I've looked at whether there is persuasive evidence of a breach of contract or misrepresentation by S.

When looking at whether there has been a breach of contract, I've considered the contract Mr S likely entered into with S (I say 'likely' because Mr S hasn't provided a copy of the actual contract). I've considered the terms on S' website along with any implied terms. The Consumer Rights Act 2015 ("CRA") implies a term into the contract that a service will be carried out with reasonable 'care and skill'.

In this case, Mr S doesn't think the remapping was carried out with reasonable care and skill, because he says he experienced issues with his car shortly after the remapping had been carried out.

In these types of situations, I would usually consider any evidence provided by an expert in the field, or some form of independent report – that's because neither myself nor AESEL are experts in car remapping.

Mr S has provided this Service with a copy of the invoice for the repairs he had carried out on his car by M. On it, it says "*strong [sic] advise to have remap restored to OEM specification as this may have caused extensive engine damage*".

I've thought carefully about the invoice supplied, but this doesn't evidence that the remap was the cause of the damage to Mr S' car. The invoice provides a suggestion of what Mr S should do next and doesn't definitively say that the remap was the cause of the problem. In addition to this, the comment in the invoice is very brief and lacks detail, it doesn't say who completed the note or what their credentials are. But mainly, it's not evidence that supports Mr S' comments that the remap was the cause of the problems with his car.

Mr S has suggested that this Service contact M to get its view on what caused the turbo failure. But as far as I'm aware, Mr S has already provided this Service with the best evidence he can from the time of repair. Now the car has been repaired, and some two years after the event occurred, it would be difficult now for an independent report to be carried out which would prove the remapping was the cause of the subsequent faults.

I've gone on to consider the likely terms of the contract between Mr S and S in order to get further clarity as to whether there has been a clear breach of contract. The terms I've seen that are available online don't provide a guarantee of the service, as Mr S said it did. On the contrary, the contract states "*we make no representation or warranties that Our Services will not expose or exacerbate a previously unknown fault or weakness with your vehicle, which may ultimately lead to an engine failure*". So, it seems that the remap could make worse an underlying issue with the car. And while I accept that Mr S has said the car was in good working order prior to the remap, given the age and mileage of it, I can't discount the possibility that there could have been an underlying issue with the car before it was remapped. I've seen no evidence which suggests the problems Mr S experienced were as a result of the remap and not an underlying (known or unknown) fault or weakness with his car.

I note that Mr S has said that S would carry out a basic inspection prior to the remap and if it had identified a fault, he wouldn't have continued with the remap. But the terms also say that while a 'basic' inspection would be carried out, this may not identify an underlying issue or fault with the car. So even while S hasn't provided a report to show what the inspection showed, I'm not persuaded this information would change the outcome here. Because the inspection might not have identified a fault – especially given that, in its own words, the

inspection was ‘basic’. And I find it unlikely that S would have continued with the service had it found an underlying issue with the car.

I’ve noted that part of the contract Mr S entered into with S explained what Mr S would need to do *“if there is a problem with the services”.* So, I’ve thought about whether S has breached this part of the contract it had with Mr S. I can see this part of the contract states Mr S would need to get in touch with S as soon as reasonably possible, which I’m satisfied Mr S did do. And it states that Mr S would need to give S the opportunity to repair or fix any defect.

I’m not necessarily persuaded Mr S did this; he first contacted S about the fault on 1 January 2023, and he then drove his car on 4 January 2023, which is when it started to smoke. I’m not persuaded that Mr S gave S reasonable opportunity to repair the fault, because he drove the car only days after letting S know about a fault. And it’s possible that the fault was made worse by Mr S driving the car, after already being aware of a problem. In any event, I’m aware that S didn’t respond to Mr S’ attempts to contact it anyway. But even if I consider that Mr S did everything as he was supposed to, I still don’t have enough information to say S breached the contract, because I haven’t seen any evidence that there was a problem with the service (and not the car) – for the reasons I’ve already explained.

Mr S has referred to this same section of the contract where it says S will give compensation for any fault or defect because of the remap. He states that S hasn’t shown that there was no defect, and the CRA says, in the first six months, it’s down to the supplier to show there was no fault with the goods or services. I’m sorry to disappoint Mr S but I don’t agree with his comments here. The part of the CRA Mr S refers to only applies to goods – not services. And in any event, it’s still necessary to show there’s a fault before what’s often referred to as the reverse burden of proof applies. So, S wouldn’t need to prove there’s no fault, it needs to show that a proven fault wasn’t present at the point of supply. But in this case, for the reasons I’ve already explained, there isn’t a proven fault.

Based on everything I’ve said, even if AESEL had carried out an investigation into the claim like it should have done, I’m not persuaded that it would have found there to be a breach of contract based on the evidence that’s been provided. And therefore, I won’t be asking AESEL to refund him.

Customer service

Mr S says that he received poor service from AESEL in relation to his claim and I’m minded to agree. In my view Mr S provided sufficient information and to the correct email address for AESEL to have considered his claim but it failed to do so.

Mr S has said that he has spent 14 months dealing with AESEL so he should get more than the £100 the investigator thought was fair. While Mr S’ communication with AESEL has spanned over many months, I haven’t seen evidence to persuade me that Mr S was in contact with AESEL constantly throughout this period of time.

It’s seldom straightforward to decide on appropriate levels of compensation for non-financial losses. Not least because the impact on the consumer will be, by its very nature, subjective and difficult to quantify. In this case, I’ve considered the impact Mr S says AESEL’s handling of his claim has caused him together with our general approach to awarding compensation for distress and inconvenience, which can be found on our website. And having done so, I’m satisfied that £100 represents a fair and reasonable sum for AESEL to have to pay for its poor handling of Mr S’ claim and the distress and inconvenience this poor handling is likely to have caused him.

Putting things right

AESEL should put things right for Mr S by paying him £100 for the distress and inconvenience the poor handling of his claim is likely to have caused him.

My final decision

For the reasons set out above, my final decision is that American Express Services Europe Limited (AESEL) must pay Mr S £100 for its poor handling of his claim, but it need do nothing more.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 24 April 2025.

Sophie Wilkinson
Ombudsman