DRN-4831407

The complaint

Mr B complains that American Express Services Europe Limited ("AESEL") rejected his claim under section 75 Consumer Credit Act 1974 ("CCA") in respect of a training course.

What happened

Mr B's daughter wanted to take part in a training course and entered into an agreement with a training company ("the Supplier") on 3 August 2020. The agreement signed by Miss B sets out training programme which was due to last some 20 to 24 months and shows the amount due to be paid which was £77,950 inclusive of VAT. It states that: "The Programme Fee is payable by way of an initial payment of £14,000 followed by 12 monthly payments of £5,329.17. The first instalment is due on the course start date, with the remaining 11 due on the 1st day of each month after that."

Mr B paid for the training using his AESEL card. He paid a total of £29,987.51 before the Supplier ceased to trade in May 2023. The last payment was made on 5 November 2020.

Mr B raised a dispute with AESEL on 12 July 2023. He said the course had been unsatisfactory and Miss B had only been given limited training. AESEL concluded that it was too late to raise a chargeback and Mr B made a claim under section 75 CCA. AESEL said that the claim failed on two grounds. Firstly, the cost fell outside the financial limits and secondly the required debtor-creditor-supplier agreement was not present.

Mr B brought a complaint to this service where it was considered by one of our investigators who didn't recommend that it be upheld. He concluded that AESEL was correct in its analysis that the claim failed.

Mr B didn't agree. He said he was only claiming £29,857.51 which fell within the financial limits for section 75. He also said that the course was made up of specific blocks and each payment had made was for specific services. He also pointed out that he made four separate payments each within the limits. As for the issue of the debtor-creditor-supplier issue he had paid the Supplier for services which his daughter benefitted from. He had a vested interest in ensuring the contractual obligations were fulfilled.

He also said that the liquidation of the Supplier was beyond his control and so he was not able to make a claim until 2023. He said the primary objective was to ensure a fair resolution and a degree of flexibility should be applied.

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 Mr B, but I do not consider I can uphold his complaint. I will explain why.

There are two routes by which Mr B's claim could be pursued, a chargeback or a claim

under section 75 CCA.

Chargeback

It may help if I explain the chargeback system. Chargeback doesn't mean there is joint liability on the card company. It is a voluntary scheme administered by the card scheme, not AESEL. The consumer makes a claim to their bank and it puts a request to the merchant's bank. But there are no guarantees the consumer's bank will be able to recover the money through chargeback, or that the merchant will accept that the claim is justified.

The card scheme requires that a chargeback be made within 120 days from the date of the transaction and Mr B first contacted AESEL well beyond that deadline. AESEL has no control over the rules applied by the card provider and if it had submitted a chargeback it is clear that it would have been rejected so I cannot say it was wrong in not submitting one.

Section 75 CCA

Section 75 offers protection to customers who use certain types of credit to make purchases of goods or services. Under section 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 section 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

The three parties in the agreement are

- a debtor – the person who has an obligation to make repayments to the creditor under the credit agreement.

- a creditor – the credit provider, who pays the supplier for the goods or services on behalf of the debtor. This will most likely be a bank, card issuer or other lender, such as a point of sale loan provider or catalogue company.

- a supplier – the party who provides the goods or services to the debtor and receives payment from the credit provider.

In this case the debtor was Mr B. But Miss B was the one who signed the agreement and the Supplier did not have a contractual arrangement with Mr B. As he was not a party to that agreement he is not part of the required debtor-creditor-supplier chain. He sits outside it and so the arrangement falls outside the rules of section 75. Miss B is the one who suffered the breach of contract, but she does not have an agreement with AESEL and so has no right to make a claim under section 75.

I appreciate Mr B wanted his daughter to benefit from the training, but he was not party to any agreement with the Supplier and so the required link is broken. There is not a debtor-creditor-supplier agreement.

Section 75 also has financial limits. The cash price of the goods or service must be more than £100 but no more than £30,000. It does not matter how much was paid by credit. I have looked at the agreement signed by Miss B and see that it states:

"*The cost of the [Training Programme] is £77,950 including VAT, where applicable, and is based on you completing the Programme within course syllabus allocations for training hours and [X] fees.*

The Programme Fee is payable by way of an initial payment of £14,000 followed by 12 monthly payments of £5,329.17. The first instalment is due on the course start date, with the remaining 11 due on the 1st day of each month after that."

I am satisfied the cash price of the training was £77,950 and the payments made by Mr B were not linked to the provision of specific services. Miss B entered into an agreement for the provision of a training course at a cost of £77,950 and this was the cash price of the service. The test is what is the cash price and not what has been paid. It follows that the sum payable exceeds the £30,000 upper limit for section 75.

In conclusion I appreciate that the supplier ceased to trade and Miss B did not receive what she signed up for, but that does not mean I can require AESEL to overlook the law and the relevant rules. In short, I cannot conclude that AESEL did anything materially wrong in its handling of Mr B's claim.

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 B to accept or reject my decision before 26 November 2024.

Ivor Graham
Ombudsman