DRN-4845370

The complaint

Mrs B complains about the way American Express Services Europe Limited ('AESEL') responded to her claim made under section 75 of the Consumer Credit Act 1974 ('section 75').

Mrs B is represented in her complaint. Where I refer to what Mrs B has said it should be taken to include submissions made on her behalf.

What happened

Mrs B has a AESEL credit card and her son, Mr B, is an additional card holder. In October 2022, Mrs B's car had a major engine fault which was being driven by Mr B. So, he arranged for it to be taken to an engine specialist, who I will refer to as 'T'.

Mr B arranged for T to supply and fit a replacement engine. T originally said this wouldn't cost more than £5,500 but later changed the cost to £7,500 after it carried out some investigatory work on the car. Mr B agreed with T to carry out this work, which was completed in early January 2023. Mr B, as the additional card holder, used Mrs B's AESEL credit card account to pay £2,000 towards the total cost with a transaction date recorded as 12 January 2023. He used his own funds for the remaining costs.

Within a few months, whilst Mr B was using the car, he experienced various mechanical problems. Mr B attempted to contact T to try to claim under its twelve-month warranty, but said it refused to communicate with him. So, on 6 June 2023, Mrs B sought to obtain a refund via AESEL's chargeback scheme in relation to the payment she made towards the repairs.

AESEL declined Mrs B's chargeback request because she had brought it outside the claim period of 120 days. AESEL subsequently considered a section 75 claim, but this was rejected on the basis that the necessary 'debtor-creditor-supplier' ('DCS') agreement didn't exist. AESEL said this was because T had used a payment aggregator service ('payment facilitator') to process the credit card payment.

Our investigator concluded that the DCS agreement hadn't been broken for the reasons AESEL said. She asked AESEL to review Mrs B's claim with this in mind. AESEL responded by saying that it considered the DCS agreement had been broken for another reason – it noted Mrs B didn't have a contractual relationship with T as it was her son, Mr B, who had made the arrangements to have the engine supplied and fitted. So, AESEL concluded, the DCS had been broken for this reason. Our investigator didn't think AESEL was acting unfairly for reaching this conclusion particularly as the invoice Mrs B had provided to it was in the name of Mr B. This contrasted with the invoice provided to our service which was addressed to Mrs B.

Mrs B asked for the matter to be referred to an ombudsman for a decision. She said T had incorrectly used Mr B's name on its invoice which it had since corrected, and this is why there are two different invoices. She maintained that Mr B was only acting on her behalf in dealing with T. And that as she owned the car, she was the contractual party.

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.

While I might not comment on everything (only what I consider key) this isn't meant as a discourtesy to either party – it reflects my role resolving disputes informally.

I must decide what, if anything, AESEL should do to resolve Mrs B's complaint. To do this, I've to decide what I think is fair and reasonable, having regard to, amongst other things, any relevant law. Mr B used Mrs B's credit card account in his capacity as an additional card holder to partly pay for the service provided by T which was to supply and fit a new engine to Mrs B's car. This means that section 75 is relevant law to this case.

Section 75 allows Mrs B in certain circumstances to hold AESEL responsible for breach of contract or misrepresentation in respect of goods or services purchased using the credit afforded here. However, there are certain technical criteria that have to be met for a section 75 claim to be valid. These criteria relate to the cost of the goods or services, the parties to the transaction, or the way the payment was made. One of those is for there to be a 'debtor-creditor-supplier' (DCS) agreement between the parties to the transaction.

As the credit card used to pay for part of the costs of repairs was Mrs B's credit card, she is the 'debtor', while the 'supplier' for the purposes of the transaction is the engine supplier and fitter, T, who received the relevant payment. So, in order for there to be a valid DCS agreement I would need to be satisfied that Mrs B contracted with T. I should note that as an additional card holder Mr B isn't the 'debtor' for the purposes of section 75. Mrs B is the account holder and is solely responsible, as the debtor, for paying the creditor (AESEL).

Initially I can see AESEL said the necessary DCS agreement wasn't in place for Mrs B to be able to hold it liable for what's happened under section 75 because of use of a payment facilitator used by T to process its payments. AESEL says this broke the DCS agreement between itself and the supplier (T). I don't think that AESEL is correct to say the involvement of a payment facilitator means the DCS agreement isn't in place. However, this doesn't make a difference because I think the claim against AESEL would be unsuccessful for the reasons it later said, which was that the DCS agreement wasn't in place because Mrs B wasn't party to the contractual arrangements for the supply of, and fitting of, the engine to her car.

I've reviewed the evidence Mrs B submitted to AESEL in support of her section 75 claim. Amongst other things, she provided an invoice for the cost of repairs addressed to Mr B; a detailed written statement from Mr B explaining the contractual arrangements – these arrangements were agreed over the phone between Mr B and T and there was no written agreement; an invoice for a head gasket purchased by Mr B and sent directly to T for fitting to the car; and various emails between Mr B and T mostly relating to the collection of the car following the repairs.

In terms of Mr B's prepared statement submitted by Mrs B in support of her claim, outlining the contractual arrangements with T, this included information showing it was Mr B who:

- agreed to terms under which T would fit and supply the engine to the car
- requested customised changes to the standard fitting including paying for, and supplying, a customised head gasket
- agreed to the initial costs, and later, agreeing to the cost when T informed him these had increased following investigatory work

In my view, I think Mr B's account of what happened in terms of the contractual arrangements,

along with the other documents submitted as part of Mrs B section 75 claim, provides persuasive evidence that it was Mr B rather than Mrs B who contracted with T for it to carry out the repairs on the car. I consider this is reinforced by the fact Mr B paid for most of the repairs using his own funds.

I've also considered what Mrs B has said about the invoices – the one submitted to us showing her name, and the one submitted to AESEL showing Mr B's name – but I can't say AESEL is acting unfairly or unreasonably for relying on evidence submitted by Mrs B as part of her section 75 claim. From what I can see, the invoice she submitted to AESEL was in the name of Mr B. Further, the invoice only forms part of the evidence AESEL had available to assess her claim. Along with the other evidence, which I've summarised above, I think there was sufficient evidence for AESEL to reach the conclusion it did.

I appreciate what Mrs B says about being the owner of the car. But for the purposes of a section 75 claim and meeting the DCS agreement requirements, I think the important point is who the contracting parties were in terms of the supply and fit of the new engine. And I consider all the evidence strongly supports that it was Mr B who was contracting with T to carry out these works to her car.

So, I don't think AESEL has acted unfairly or unreasonably in reaching the conclusion that there wasn't the requisite DCS agreement in place for Mrs B to bring a section 75 claim against it in respect of the payment she made to T. I know this outcome will come as a disappointment to Mrs B. However, in this case AESEL is only potentially responsible for services provided by T via section 75, so it's important that I consider the specific section 75 criteria when determining if it should fairly do anything here.

Another way in which a credit card provider can be responsible for paying compensation for defective goods is under the relevant chargeback scheme. This isn't a law, but a process put in place by each credit card scheme. Different credit card schemes have different rules about chargebacks, with different time limits. AESEL operates its own scheme, and so I've referred to its chargeback rules.

The most relevant chargeback reason in this case was 'defective merchandise'. The time limit for raising a claim for a chargeback under this reason is either 120 days from the transaction date, or (if later) 120 days from the date that the goods and/or services were received. Unfortunately, this time limit expired by the time Mrs B made her chargeback request. The transaction date, which was after the service date, was on 12 January 2023. So, Mrs B had until 12 May 2023 to raise her chargeback. As she didn't do so until 6 June 2023, I'm not persuaded that AESEL acted incorrectly in these circumstances. So, I find it wouldn't be fair or reasonable for me to require it to refund Mrs B the £2,000 she paid towards the repair costs of her car.

For all the reasons set out above, I'm not upholding the complaint.

My final decision

My decision is that I don't uphold Mrs B's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs B to accept or reject my decision before 15 April 2025.

Yolande Mcleod
Ombudsman