

The complaint

Mr K complains American Express Services Europe Limited (AESEL) refused to refund the cost of a bag he bought with his credit card.

What happened

In September 2023, Mr K paid £1,400 with his AESEL credit card to an online retailer for a white leather bag from a luxury brand.

A few weeks after his purchase, Mr K said he noticed “significant colour transfer” to the bag. On 21 November 2023, he emailed the retailer about the issue, and sent pictures showing the discolouration.

The retailer reviewed the pictures and told Mr K the damage was caused by the bag rubbing against his clothes, leading to the colour transfer. It said this wasn’t due to a manufacturing defect or an inherent fault with the bag.

Mr K was unhappy with this explanation, feeling the bag should withstand normal wear over such a short period. He asked the retailer to reconsider.

The retailer agreed to reinspect the bag alongside further pictures. In January 2024, the retailer conducted a technical analysis and said it’s “the garment that has released color and has stained the bag. White stains easily.” The retailer said the bag’s brand offered to wash the bag for 50 euros, but cautioned the bag might not return to its original condition.

Mr K was unhappy with the response, as he hadn’t experienced similar issues with comparable items. He asked AESEL to help him obtain a full refund.

AESEL considered helping Mr K by raising a chargeback. But it didn’t think the chargeback would likely succeed based on Mr K’s evidence, and so closed the claim.

Mr K also asked AESEL to raise a claim under section 75 Consumer Credit Act 1974 (CCA). This provision might obligate AESEL to refund Mr K if the retailer made a misrepresentation, or if it breached its contract by providing Mr K with a faulty bag. Mr K maintained the bag was faulty because it discoloured after a single use under ordinary circumstances. He said this isn’t something he should expect for a high-quality bag at the price he paid.

AESEL didn’t agree. It relied on the retailer’s previous assessment confirming there was no manufacturing defect, and that the discolouration was due to wear and tear. It said it would reconsider if Mr K obtained an independent expert report saying otherwise. And it would consider reimbursing the cost of the report if it confirmed the bag had an inherent fault.

Our investigator thought AESEL had done enough and didn’t recommend it needed to do anything further. Mr K disagreed - he maintained the bag should withstand discolouration for longer than it did, and the bag should have been physically inspected before AESEL came to any conclusions. So, the complaint has come to me for 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 think it's worth clarifying that I'm deciding whether AESEL acted fairly in assisting Mr K with his dispute against the retailer. I'm not making a finding on the underlying dispute Mr K has with the retailer. AESEL didn't supply the bag, so when deciding what's fair and reasonable, I'm only considering whether AESEL acted in line with its obligations as a provider of financial services.

As Mr K bought the bag on his credit card, the main avenues open to him for obtaining a remedy from AESEL are through a chargeback or section 75 CCA claim. I've considered how AESEL helped him pursue these claims below.

Chargeback

When someone buys something with a debit or credit card, and something goes wrong, a card issuer can try to obtain a refund for its customer under the relevant chargeback scheme. The chargeback schemes only apply to certain types of dispute, such as where someone says the goods they bought didn't match their description, or were defective.

There's no obligation for a card issuer to raise a chargeback for a customer – but I think it's good practice for it to do so where a chargeback is likely to succeed. A refund is also not guaranteed as merchants can defend them. It's important to note that chargebacks are decided based on the rules of the relevant card scheme – in this case American Express – and not the relative merits of the dispute. So, it's not for AESEL – or me – to make a finding about the merits of Mr K's dispute with the retailer.

AESEL's role was to first consider whether it had grounds for raising a chargeback, and secondly whether it had reasonable prospects of success if it pursued one.

AESEL decided the most appropriate reason code to raise the chargeback under was "Not As Described Or Defective Merchandise". This code applies when a consumer says the goods were damaged or defective on receipt or didn't match their description. I think this was a reasonable choice as it fits Mr K's situation – and I can't see any other applicable code. Despite the code being the most suitable, I think AESEL reasonably concluded a chargeback claim was unlikely to succeed on the evidence available. I'll explain.

Mr K commented that a high-quality bag comes with expectations, but he didn't specify how its description on the retailer's website was different from what he received. I've looked at the description, and I can't see anything that promises something Mr K didn't get – so it's likely the retailer would successfully defend any claim about the bag being misdescribed.

I also think it's unlikely any claim about the bag being damaged or defective on receipt would likely succeed under the chargeback rules. I say that because Mr K didn't complain about the condition of the bag when he received it, only that it discoloured weeks later. He said a high-quality bag at its price ought to be more resistant to colour transfer.

Mr K's point is more closely associated with his rights under the Consumer Rights Act 2015 (CRA) to receive a bag of "satisfactory quality". However, the chargeback rules do not incorporate the CRA. Success under the rules depends on the bag being damaged or defective on receipt – "satisfactory quality" simply is not a consideration under the chargeback scheme. On that basis, I think it was reasonable that AESEL withdrew the chargeback as it was unlikely to succeed, and instead focused on whether Mr K could

successfully claim under section 75 CCA. Under this provision, Mr K can ask AESEL to consider his consumer rights under the CRA.

Section 75 claim

I've considered what AESEL said about Mr K's prospects under section 75 CCA – and whether its decision to decline the claim was fair in the circumstances.

Under section 75, Mr K can hold AESEL responsible for a “like claim” he would have against the retailer for breach of contract or misrepresentation.

Certain criteria must be met for section 75 to apply relating to matters such as the cash price of the goods Mr K bought, and the relationship between the parties to the transaction. I'm happy those are met here, so I've gone on to consider whether there is evidence of a breach of contract or misrepresentation.

Misrepresentation

Mr K could argue the retailer misrepresented the bag. For this to be the case, the retailer would have had to make a false statement of fact that caused Mr K to buy the bag. Things said about the bag in its description would be considered statements.

However, there's nothing in the bag's description that suggests something was falsely claimed. The advert was for a new white leather bag and no one disputes Mr K received exactly that. I'm satisfied there wasn't any misrepresentation.

Breach of contract

AESEL is responsible for remedying a breach of contract by the retailer. This could involve a breach of the contract's explicit terms. It could also involve a breach of terms implied into the purchase contract by law – such as those implied by section 9 of the CRA – which require the quality of the bag to be “satisfactory”.

I've looked at the terms Mr K agreed to. They state the retailer has a 28-day return policy for new and unused items. However, they don't apply as Mr K used the bag and rejected it after that time. The only other relevant terms summarise the rights he already has under the CRA, which I've considered below.

Mr K is entitled to receive a bag of satisfactory quality under the CRA. The bag would be considered “satisfactory” if a reasonable person would regard it as such, taking into account the bag's description, price, condition, purpose, durability, and various other considerations as set out in section 9 (3).

The retailer reviewed the photos of the discoloured bag twice, to determine if Mr K received a bag of satisfactory quality. The second assessment, described as a “technical analysis”, also appears to involve the bag's brand. The assessments concluded that colour transfer from garments caused the discolouring, and that there was no manufacturing defect. The brand recommended washing the bag to remove the discolouring.

I only have a summary of the technical analysis, but I don't doubt its accuracy. I say that because it's consistent with Mr K's photos showing discolouring on the back of the bag, which is the side that's more likely to rub against clothes and cause colour transfer. I'm persuaded the brand also thought external factors caused the staining because it recommended a wash. I don't think it would have recommended a wash if it thought the staining was because of some inherent defect that caused the discolouration.

AESEL said it was not an expert on what causes discolouration. It said it was relying on the conclusions of the technical analysis as the most reliable source of whether the bag had a defect, and pointed out there was no alternative expert report to suggest these primary assessments were incorrect. I also haven't seen anything else that explains why the discolouration occurred, or creates doubt about the validity of the expert analysis. In the circumstances, I think AESEL's decision to rely on the report and decline the claim was fair.

I also think it would be disproportionate to recommend AESEL pay for a technical analysis simply because the bag was not physically inspected. If the bag had a problem that needed a physical inspection, I think it's likely the brand would have asked the bag to be returned. It didn't, so I'm satisfied an assessment of what I can see are high-definition photos was sufficient. AESEL offered to have another look if Mr K obtained his own expert report – I think the offer is pragmatic and reasonable in the circumstances.

I sympathise with Mr K's disappointment over how quickly the bag discoloured. However, I don't agree with Mr K that a high-quality bag at the price he paid for it necessarily means it ought to be more resistant to staining, or that it wasn't fit for purpose. I'd expect the bag's high price to equate with greater durability and longevity over cheaper alternatives. That means its workmanship should last and its materials should not degrade. But I think it's going too far to say "durability" extends to the ability of the white leather to withstand colour transfer - unless it's a particular feature that is highlighted in the bag's description.

There's nothing in the description that suggests the white leather would not stain. I also don't think a reasonable person would expect white leather, even high-quality leather, to be immune to colour transfer. From what I've seen online, high-quality white leather bags, including the particular brand of bag Mr K bought, are susceptible to colour transfer, and care can be taken to minimise its effect.

In summary, I don't think Mr K received a big of unsatisfactory quality, so I don't think AESEL acted unfairly by declining Mr K's section 75 claim.

Customer service

After reviewing how AESEL handled Mr K's claims, I agree with the investigator that AESEL could have done more to explain why it wasn't pursuing the chargeback. Otherwise, I think it kept in contact with Mr K relatively frequently and clearly explained the section 75 outcome.

I can also see AESEL took a while to process both the chargeback and section 75 claims. But the complex nature of these types of disputes means they often can take some time. I don't think the time taken was unusual given the circumstances.

I think AESEL's service overall was satisfactory, so I'm not recommending AESEL pay any compensation for poor service.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 29 November 2024.

Alex Watts

Ombudsman