

The complaint

Mr N is unhappy with American Express Services Europe Limited's ("AESEL") handling of a claim he made to them under Section 75 of the Consumer Credit Act 1974 ("Section 75").

What happened

Mr N ordered a kitchen from a merchant I will call M in 2021. The kitchen was due to be fitted from 14 February 2022 but there were delays and the work wasn't completed until the end of May 2022. When it was completed Mr N wasn't happy with some of the workmanship. He complained to M and they offered to fix the outstanding issues and to pay Mr N £875 in compensation.

Mr N wasn't happy with M's offer to resolve matters. As he'd paid for the kitchen and its installation with a credit card provided by AESEL he raised a Section 75 claim with them.

AESEL thought M's offer was reasonable in the circumstances and when Mr N referred his complaint to this Service, so did our investigator. The investigator understood that since Mr N had referred his complaint to this Service, he had allowed M to complete the necessary repairs but that he was unhappy with the quality of that work and had explained there had been further delays. She explained that AESEL hadn't been given an opportunity to consider those new complaints and that we couldn't consider them until they had.

As Mr N disagreed with the investigator's opinion his complaint has been passed to me, an ombudsman, for a final 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 know it will disappoint Mr N, but I agree with the investigator's opinion. I'll explain why. Where the information I've got is incomplete, unclear, or contradictory, as some of it is here, I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

The relevant legislation

When something goes wrong and the payment was made in full or in part, with a credit card, as was the case here, it might be possible to make a Section 75 claim. This section of the Consumer Credit Act 1974 (CCA) says that in certain circumstances, the borrower under a credit agreement has a right to make the same claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

It's not for me to decide the outcome of a legal claim Mr N may have under Sections 75 but I'm required to take the provisions into account when deciding whether AESEL was reasonable to reject his claim.

The Consumer Rights Act 2015 (CRA) says that goods should be of satisfactory quality when supplied and that the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances. It also says that every contract to supply a service is to be treated as including a term that the trader must perform the service with reasonable care and skill.

Section 52 of the CRA explains that where a contract doesn't stipulate an end date *"the contract is to be treated as including a term that the trader must perform the service within a reasonable time"*.

Was there a breach of contract?

I think there was a breach of contract here as goods weren't of a satisfactory quality and there were unreasonable delays. It was clear, for instance, that the corner cupboard planned by M couldn't be installed without a redesign; boxing hadn't been completed promptly; parts had been delayed; and regardless of the lack of a specific completion date, there had been what I think could only be considered an unreasonable delay. I don't think a reasonable person would expect to be kept waiting for four months.

M agreed to put things right for Mr N and AESEL thought that was reasonable. I would agree.

M also offered £875 in respect of the distress and inconvenience that had been caused. I've thought about whether AESEL were fair to suggest that was reasonable compensation.

Mr N has explained that he had to extend a rental so he could continue to live in alternative accommodation while his kitchen installation was completed. He's explained that there were boxes in the living area and that the water had been turned off so the heating wasn't working, his family couldn't shower, there was no access to water, and the toilet wouldn't work. AESEL didn't think Mr N had mitigated his losses and, in the circumstances, I don't think they were unreasonable to suggest that. Mr N hadn't provided sufficient evidence that the stop cock had been isolated. He's explained to this Service that the isolation valves had been removed by the plumber but I don't think Mr N has been able to provide much evidence to support that, and even if they had been removed I think it would have been much cheaper for Mr N to have commissioned his own plumber to replace the isolation valves so that mains water could be supplied to the rest of the house, than to continue to pay expensive rental costs. While I accept that it would be more difficult to live in the property until the appliances and amenities were all available, I don't think I have evidence to suggest the property wasn't safe to live in, or that alternative arrangements couldn't have been reasonably made to enable Mr N to, for instance, eat or wash at the property. Ultimately, I don't think AESEL were unfair to decide that M's offer of £875 was unreasonable.

Issues raised since AESEL considered Mr N's claim

Our Service can only usually consider complaints after the business has provided their response on them. I understand that Mr N is upset about further delays and unsatisfactory work that he's experienced since he gave the go ahead for the remedial work to be

completed. If he remains dissatisfied with those issues he'll need to refer them to AESEL. They'll give him the right to refer that complaint to this Service if he's unhappy with their response.

My final decision

For the reasons I've given above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 August 2024.

Phillip McMahon
Ombudsman