

## **The complaint**

Mr D, who is represented by Mrs D, complains that American Express Services Europe Limited (AESEL) rejected his claim under section 75 Consumer Credit Act 1974 ("s.75").

## **What happened**

Mr D ordered a family photograph in print form from the merchant. Mrs D has explained how the purchase was made. Photos were taken and then displayed on a computer screen. Certain effects could be chosen as could the medium it was to be printed on before payment was made. Mr D ordered an acrylic print and paid £1,364 using his AESEL credit card.

When the print arrived Mrs D felt that it was not as they had seen on the computer screen or in an email they had been sent. She noted the composition had been reversed. She also said that they had not been told about having to pay import duty. The merchant explained the import duty was decided by the relevant government. It arranged for a brighter replacement print be sent with the right composition.

A second one was delivered which Mrs D thought was marginally brighter. The merchant agreed to send a third version, but Mrs D remained unhappy with it and asked for a refund. The merchant said that due to the personalised and exceptional nature of the process it could not offer a refund.

Mr D contacted AESEL and made a claim under s.75. Initially it rejected this as it believed there had not been a debtor-creditor-agreement due to another party, a payment processor, being involved in the transaction. It subsequently accepted this assertion was incorrect, but didn't believe that either a misrepresentation or a breach of contract had been established.

Mr D brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. He noted the photos supplied by Mrs D and concluded these were not sufficient to demonstrate either misrepresentation or a breach of contract.

Mrs D did not agree and asked that the matter be referred to an ombudsman.

## **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 D and Mrs D but I do not consider I can uphold this complaint. I will explain why.

When someone makes a payment on their credit card, in order to make a valid s. 75 claim against their credit card issuer they need to have used the credit card to pay a company they have a claim against for breach of contract or misrepresentation. S. 75 gives the debtor (the credit card account holder) the same claim against their credit card issuer as they would have against the supplier of goods or services, so long as that claim is for breach of contract or misrepresentation.

In this case Mr D entered into a contract with the merchant to supply a photographic print in acrylic and this is what it supplied. The issue is whether the print was as he had been led to believe. Mrs D has referred to examples they saw in the gallery which were brighter and clearer. She has also referred to an image which was sent by the gallery via email which she says had better and brighter definition.

However, what was ordered was an individual personalised piece of art and I cannot see that the merchant guaranteed that it would be as Mr and Mrs D had seen in the flesh or in an electronic version. I also note that there are different formats and it is not clear if those seen in the gallery were in the same format and on the same medium as that ordered by Mr D.

It is also very difficult to compare the prints in different settings. As our investigator has explained the gallery lighting is different to that of Mr D's house. Also the look would be different on a computer screen. It is not unusual for goods to be displayed to their best advantage by merchants, but that does not amount to misrepresentation.

I have considered the terms and conditions of the agreement which Mr D entered into. These say that the merchant offers no refunds due to the personalised nature of the prints. These terms are readily available on the merchant's website and make it difficult to say that Mr and Mrs D were entitled to a replacement print or their money back. Of course, if the goods were faulty when supplied it could be determined that there had been a breach of contract, but the fact the print was not as expected does not mean that it can be held to be faulty.

So while the finished print may not have been what Mr D was expecting I cannot say that there has been either a breach of contract or misrepresentation.

I would add that it is regrettable that AESEL took the view that the debtor-creditor-agreement was broken by the interpolation of a fourth party, but it did realise this was an error and the considered Mr D's claim on its merits.

### **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 D to accept or reject my decision before 31 March 2025.

Ivor Graham  
**Ombudsman**