

The complaint

Mr C is unhappy with a decision taken by American Express Services Europe Limited ("AESEL") to refuse a refund request he made to it for £1,131.40.

What happened

On 19 August 2023 Mr C purchased two televisions (from a retailer I will call "X") via an online marketplace (that I will call "E").

Mr C says both televisions were of unsatisfactory quality so, in September 2023, he returned them to X via E.

On 20 September 2023 E confirmed to Mr C that the televisions had *"been delivered to the seller's address [X] and that the seller [X] should issue a refund by 22 September 2023."*

On the same day X confirmed to Mr C that it was *"processing [his] £1131.40 refund"* which could take up to 5 working days.

When Mr C didn't receive a refund from X (or E) he approached AESEL for the same. However AESEL concluded it wasn't obliged to make any refund to Mr C.

Unhappy with AESEL's refusal to refund him the sum of £1,131.40, Mr C complained to our service. Mr C's complaint was considered by one of our investigators who came to the view that AESEL had done nothing wrong in not refunding the sum of £1,131.40 to Mr C.

Mr C didn't agree with the investigator's view so his complaint has been passed to me for review and 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've considered the information submitted by all the relevant parties but won't be commenting on it all – only what I consider to be central. This isn't intended as a discourtesy to either party but reflects my role resolving disputes informally.

I'm sorry to hear about Mr C's dispute with X. However, it's important to note that AESEL isn't the supplier of the goods which this dispute centres around. Therefore, my role is to look at whether AESEL acted fairly in light of its more limited role as a provider of financial services.

In considering if AESEL has acted fairly I've thought about how it could have helped recover Mr C's money. In that respect I consider the relevant chargeback scheme and Section 75 of the Consumer Credit Act 1974 ("Section 75") to be particularly relevant.

Chargeback

A chargeback claim is decided on the relevant card scheme's rules, rather than on the merits of the dispute between Mr C and E (the merchant). I've considered what all the parties have said about the chargeback along with the wider evidence about the scheme rules to decide if AESEL acted fairly in handling Mr C's claim.

Mr C submitted to AESEL that he had returned his two television purchases but hadn't received a refund. As a result AESEL did start the chargeback process here. It then contacted E which raised a defence. It said that a refund hadn't been issued by X because X was of the view that the two televisions Mr C had returned to it weren't the two televisions he had purchased from it and which had been supplied by it.

In deciding if AESEL acted fairly I've considered the types of things that AESEL can raise a chargeback for under the scheme in these circumstances. It could be argued that a chargeback code relating to a credit not being provided is most relevant here in that Mr C says he returned both televisions he had purchased, was promised a refund and a refund wasn't provided. Under AESEL's rules, a chargeback may also be raised for defective merchandise if the goods received were damaged or defective providing there is proof the goods were returned.

Even though there is arguably a valid chargeback reason here I think this dispute isn't straightforward. There is no dispute that Mr C arranged a return in accordance with X's process and then sent back two packages which X confirmed were received. However, the additional layer of complexity here is E's defence that C says the two televisions returned to it weren't in fact the two televisions Mr C purchased from it. If this were the case then Mr C wouldn't be due a refund.

I've considered everything Mr C has said and submitted. It's worth remembering that I'm not determining if E (and X) is right and Mr C is wrong here. Nor am I saying that Mr C acted unreasonably in the evidence he provided or how he engaged with AESEL. Instead I'm focusing on whether AESEL acted unfairly in the way it tried to help Mr C get his money back keeping in mind the nature and limitations of the chargeback scheme. With that said it's also worth remembering that the chargeback scheme doesn't have powers like a court to compel witnesses or third party evidence in order to determine dispute outcomes.

With all the above in mind, and considering the nature of the dispute and the evidence submitted by all the parties, I don't think AESEL acted unreasonably in ultimately discontinuing the dispute.

Even if I were to accept that AESEL did make a mistake and should have pushed the matter further (likely to some form of pre-arbitration or arbitration run by the card scheme) it doesn't change my findings here in any event. Because of the nature of the dispute and the arguments on all sides, including the limitations of the card scheme to investigate further, I would find it difficult to say the scheme is more likely than not to have ruled in Mr C's favour.

Mr C's claim under Section 75 of the CCA

Section 75 can in certain circumstances mean Mr C can hold AESEL responsible for a breach of contract or misrepresentation by X.

There are certain requirements for a Section 75 claim to be valid relating to matters such as the price of the goods and the parties to the agreement. I consider the requirements are met here so I've gone on to consider whether there was persuasive evidence of a breach of contract or misrepresentation by X available to AESEL when it considered Mr C's claim.

Mr C says he returned both televisions to X. If he did so, I'm satisfied that in failing to provide a refund to Mr C X could be said to be in breach of its contract with Mr C.

The key issue here for me is whether X accepts that it received both televisions that it had supplied back and whether there is any persuasive evidence to indicate otherwise.

In its response to AESEL E stated that C said the two televisions returned to it weren't the two televisions Mr C purchased from it and it supplied to him. Although I appreciate Mr C's strength of feeling on this particular point, I'm satisfied that based with this defence and the evidence (or lack of evidence) supplied by Mr C in support of his claim AESEL acted entirely reasonably in concluding that X hadn't breached its contract with Mr C and it wasn't liable to him under Section 75.

My final decision

I realise my decision will disappoint Mr C, but I have not upheld his complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 22 April 2025.

Victoria Blackwood

Ombudsman