

The complaint

Mr C has complained about how American Express Services Europe Limited (AESEL) responded to a claim for money back in relation to a purchase made on his credit card.

What happened

The circumstances are well known so I'm not going to go over everything again in detail. But, in summary, Mr C paid £1,195 in September 2022 for treatment for his adult daughter using his AESEL credit card. Mr C said his partner, an additional card holder, arranged the treatment with the clinic for his daughter. The treatment took place in January 2023.

I understand Mr C put in a claim with AESEL around September 2023 in relation to breach of contract and misrepresentation. AESEL responded in October 2023 to say the necessary relationships didn't exist for a claim to be considered under section 75 of the Consumer Credit Act 1974. AESEL also said it couldn't raise a chargeback because it was out of time.

Mr C complained but AESEL didn't uphold the complaint. So he asked the Financial Ombudsman to investigate.

One of our investigators looked into things and broadly said he didn't think AESEL's answer to the section 75 claim was unfair although for slightly different reasons. He said that as the treatment was for Mr C's daughter, the necessary debtor creditor supplier (DCS) agreement didn't exist for a valid claim to be considered under section 75. He also agreed the chargeback didn't have a reasonable prospect of success.

Mr C agreed with the conclusions in relation to chargeback. But he said his partner engaged in negotiations and made payment to the clinic as an additional cardholder. He said his daughter had no contact with the clinic other than to have the procedure carried out. He said the contract was between the clinic and his partner. He said there was no agreement in writing, but he showed a transcript of messages between his partner and the clinic. Mr C said even though his daughter may have rights against the clinic, his wife was also a contracting party. He said his daughter was the subject of the contract but not a party to it.

As things weren't resolved, the complaint has been passed to me to decide.

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 want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr C and AESEL that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

I also want to say I'm very sorry to hear Mr C and his family weren't happy with the treatment. I can't imagine how they must feel. I know it cost a significant sum and Mr C has indicated his daughter has suffered personal injury. I hope things have improved for her and I thank Mr C for taking the time to bring the complaint.

What I need to consider is whether AESEL – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr C's request for getting money back. It's important to note AESEL isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, AESEL can consider assessing a claim under section 75 or raising a chargeback.

It's important to set out up front that even if the complaint was upheld, I'm unable to make an award for loss of amenity so if Mr C, his partner or daughter, was looking to pursue this aspect of the complaint, they may wish to seek independent legal advice because I can't cover it in a decision.

Section 75 is a statutory protection that enables Mr C to make a like claim against AESEL for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with him for the provision of goods or services. But there are certain conditions that need to be met for section 75 to apply. The value of the transaction falls within the financial limits. But there also needs to be a DCS agreement in place. Having multiple parties involved can impact the arrangement.

One of the conditions for a claim to be considered under section 75 is that the borrower (debtor) needs to have used the credit to pay the same company which they have a like claim against for breach of contract or misrepresentation.

I agree that the way the payment went from AESEL to the clinic didn't impact the DCS agreement. But I also need to consider the rest of the arrangement. In this case, Mr C is the debtor and so he'd be the one who'd need to have a claim against the clinic for breach of contract or misrepresentation. But it was his daughter who had the treatment with the clinic.

The nature of the treatment is that it's very personal to Mr C's daughter. I think it's difficult to argue that it's anyone other than Mr C's daughter that received the treatment and would be party to the contract with the clinic. If there was a consent form, as is common in these sorts of treatment, I think it likely Mr C's daughter would have signed it because she was an adult when she had the treatment. If something went wrong with the treatment it would have been Mr C's daughter that could have taken the clinic to court. While Mr C paid for the treatment, I don't think he had the type of claim against the clinic that he's now seeking to bring against AESEL.

Mr C said his wife negotiated and contracted with the clinic on behalf of his daughter. Mr C said there was no agreement in writing, so I think it's difficult to reach firm conclusions on that. But even if that was right, and Mr C's partner was a joint contracting party, she's not the debtor in this case – that's Mr C. Being an additional cardholder doesn't make that person a debtor for the purposes of the Consumer Credit Act 1974. I therefore don't find I have the grounds to direct AESEL to take further action in relation to the way it handled the section 75 claim.

The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back.

While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set

by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim. AESEL didn't think a chargeback would've had a reasonable prospect of success through the American Express card scheme. Mr C has accepted our investigator's view on this. I broadly agree and will explain why.

It doesn't seem to be in dispute the claim was raised more than 120 days from either the transaction date or when the core treatment was carried out. Mr C wasn't able to provide AESEL a contract setting out the details of exactly what was included in the contract including the aftercare. And I don't think he submitted sufficient evidence to show the ongoing service that was part of the contract and wasn't provided, or evidence for the value of what may have been lost out through aftercare. I should point out that I've read a transcript of the conversations he had with an agent from the clinic, along with his other submissions about the claim and complaint. I can understand why he was unhappy with the support. There were calls not made when agreed, and the agent suggested Mr C's daughter try another clinic. Mr C also said S didn't respond to follow up queries after that. But even had there been a contract, or details of a value that could be added to the aftercare element, based on the conversations I've seen it looks likely any chargeback would've been defended by the clinic on the basis that aftercare was available. It's important to separate what could be perceived as a lack of reasonable care (which is relevant for section 75 breach of contract claims) and whether the circumstances met the strict conditions for chargeback. Having considered everything carefully, I don't think those strict conditions were met. So I don't think AESEL had sufficient evidence to have pursued the chargeback against the clinic either for a full or partial refund, even if a portion of the claim could have been brought in time.

Overall, while I'm very sympathetic to the situation and can understand why Mr C decided to pursue the claim and complaint, I don't think there's grounds for me to direct AESEL to refund him what he requested. That's not to say something hasn't gone wrong with S, merely that from a financial service provider's perspective, I don't think AESEL's answer was unfair.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 25 April 2025.

Simon Wingfield

Ombudsman