

The complaint

Mr G has complained about the way American Express Services Europe Limited (“AESEL”) dealt with his request for money back.

What happened

In January 2022 Mr G paid around £1,300 using his AESEL credit card for dental treatment from a supplier I’ll call “S”. Mr G received sets of aligners from S and he was due to use them over the next few months. The plan came with a lifetime guarantee of sorts. Mr G said after the treatment plan ended he paid for sets of retainers in May 2022 (£80) and November 2022 (£160.80) to ensure his teeth would remain straight. He said these needed to be changed every six months and were due to last him until May 2024.

In December 2023 S went out of business. Mr G contacted AESEL to put in a claim and ask for a refund. He said S wouldn’t be able to provide the lifetime guarantee it had offered.

AESEL agreed to reimburse Mr G the cost for the retainers but didn’t agree to reimburse him the cost of the treatment. It didn’t think the necessary relationship existed for a claim to be considered about the treatment cost, although I understand it now might accept we think it does. Mr G decided to refer his complaint to the Financial Ombudsman.

One of our investigators looked into things and ultimately didn’t recommend AESEL take any further action.

Mr G didn’t agree. He provided a quote from another dental treatment provider for treatment of around £1,000. He said this was for completion of treatment following the incomplete services from S. He said he should be able to recover money given S went out of business and couldn’t provide the service.

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 G 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.

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 G’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 of the Consumer Credit Act 1974 (“s.75”) or raising a chargeback.

S.75 is a statutory protection that enables Mr G 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 s.75 to apply. The value of the transaction for the dental treatment falls within the financial limits. Although the £80 cost of the retainers doesn’t fall within the financial limits. I think the necessary relationships exist between the parties.

I’ve thought about how AESEL handled the s.75 claim with respect of the dental treatment.

Implied terms

In cases such as this it is often complex to assess the quality of the service Mr G paid for. Results from such treatments are subject to many variables. While Mr G provided a quote for further work, he’s not provided supporting evidence such as an independent, expert opinion that sets out the treatment he paid for with S has not been done with reasonable care and skill as implied by the Consumer Rights Act 2015 (‘CRA’). I’m mindful it is the manner in which the service was provided rather than the results of the treatment that is the crucial issue for me in considering whether there’s been a breach of an implied term in relation to the service.

Moreover, it’s important to set out I’m considering how AESEL responded to the claim based on the evidence presented to it. At the time Mr G put in his claim the evidence he submitted was very limited. I’m not a dental expert, and neither is AESEL. Without sufficient supporting evidence, I don’t think AESEL was unfair to not uphold the claim on the basis of a breach of an implied term of the contract because I’ve not seen enough to determine the service S offered wasn’t carried out with reasonable skill and care.

Express terms and guarantee

I also need to consider what I think Mr G’s contract with S agreed to provide in terms of treatment so I can determine whether there has been a breach of an express term of it. I don’t have a contract signed by Mr G. There’s a lack of evidence, which makes it difficult to assess. But it’s not in dispute Mr G was due to receive a set of aligners when he entered into the contract in January 2022 and that he received and used them. I think the core contract was for those set of aligners that he was due to use for a few months.

While I appreciate Mr G may be in a difficult position because some of the evidence isn’t available, I can only consider how AESEL acted based on what was able to be supplied. In the absence of a specific signed contract, I’ve looked at S’s website from around the time Mr G entered into the contract. This says most treatment lasts between 4 to 6 months and if the customer hasn’t achieved the results they want, and providing they’ve met certain conditions, they might be eligible for additional ‘touch up’ aligners under a guarantee.

On S’s website from the time, the frequently asked questions (“FAQ”) page has a section for further treatment under the guarantee. This suggests customers can request further aligner ‘touch ups’ after the core treatment at no cost on an ongoing once a year basis. I can’t see Mr G requested ‘touch up’ treatment in 2022 or 2023, but he’s indicating this is the aspect he’s lost out and why he’s due a refund.

From what I can see the availability of a ‘touch up’ isn’t the same as saying that particular results will be achieved. It seems like it’s intended for refinement if possible. What the guarantee offered was the *possibility* of having further aligners provided that during

treatment Mr G took certain steps. And that, after treatment, Mr G bought retainers every 6 months and wore them as prescribed. A dentist also had to approve the treatment. My understanding is that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible.

Mr G has said he bought retainers and complied with the condition until May 2024. I can see he ordered a set of retainers in May 2022 and another set in November 2022. He'd have needed to buy a set in May 2023 and November 2023 to keep the qualifying conditions for the guarantee of 'ordering retainers every six months'. Even if I were to accept Mr G paid for three sets in November 2022 to comply with the 2023 conditions, I still don't think AESEL had sufficient evidence that would've led to a different outcome. I'll explain why.

Mr G thinks he should be provided with a full refund of the treatment costs. Even if we were to accept there's a potential breach identifiable (which isn't clear) because Mr G can no longer use the guarantee, given the stage of treatment he was at, the guarantee would never have given him the option of a refund of the core treatment costs. From what I've seen, a full refund was only available for the first 30 days after Mr G began the treatment around January 2022, and only if Mr G had not opened or used the aligners. I don't think it would be fair or reasonable for me to tell AESEL that it should now provide Mr G with a full refund to compensate him for a potential breach that has happened based on the limited evidence available. I don't think it was unreasonable for AESEL to not offer to refund the value for what was provided under the core contract.

There are many ways in which the guarantee could have ceased to be of use to Mr G. He may not have done what was required in terms of buying retainers every six months. S may not have approved further aligners. AESEL had no way of knowing if Mr G was wearing the retainers as prescribed as well – another condition for the guarantee. The guarantee only gave the possibility of annual touch-up aligners – not the certainty that they would actually be provided. If Mr G did buy sets of retainers to take him to May 2024, this could indicate he was happy with the results and wouldn't have sought further treatment under the guarantee. So it's not clear on what basis AESEL would have seen he'd lost out.

Even if I were to accept there's a potential loss, it wouldn't be straight-forward to establish the value of the perceived loss. And I'm required to resolve the complaint quickly and with minimum formality. I don't think AESEL is required to remedy a failure in relation to the core treatment or results Mr G received. Even if Mr G may have been able to further utilise the guarantee, I'm conscious Mr G has been refunded around £240. This represents a refund of nearly 20% of the cost of the treatment. I don't see on what basis he'd not have been required to pay for the retainers, given he presumably used all of them to maintain the results. Considering we'll never know if Mr G would have continued to receive any benefits under the guarantee or that he was still eligible; taking into account he's received the core treatment, I think he's ended up in broadly a fair position if you were to consider the refund he's received as a price reduction. It seems like a fair compromise given I think the total amount paid was substantially for the core treatment.

While I am sorry to hear Mr G is unhappy, with s.75 in mind, I don't find there are grounds to direct AESEL to refund him the full costs of the treatment or a further amount in relation to the guarantee.

Chargeback

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. American Express was the card scheme in this case.

Mr G received a refund for the cost of the retainers, but it's not clear on what basis AESEL agreed that. For similar reasons given above, even if a chargeback for the treatment was raised within the time limits (AESEL said it wasn't), I don't think Mr G supplied sufficient evidence that would've led to a different outcome to what he's achieved. There's not enough evidence the core treatment was defective, not as described or not provided. And I've set out why, in the round, I think the refund he's received is broadly fair for the potential loss through the guarantee.

All things considered, while I'm very sorry to hear Mr G is unhappy, I don't find I have the grounds to direct AESEL to take any further action. I should, however, point out Mr G doesn't have to accept this decision. He's also free to pursue the complaint by more formal means such as through the courts.

My final decision

My final decision is that American Express Services Europe Limited has done enough to put things right.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr G to accept or reject my decision before 4 April 2025.

Simon Wingfield

Ombudsman