

The complaint

Mr J complains that American Express Services Europe Limited (“AESEL”) declined to refund him for his purchase of a faulty hard drive.

What happened

In February 2021 Mr J bought four hard drives online, and paid for them with his AESEL credit card. One of the hard drives later developed a fault. Mr J was unable to get in touch with the merchant, and although he had been sold a five year warranty, the warranty was provided by the manufacturer, who would only discuss it with the merchant and not with Mr J.

In June 2022, Mr J asked AESEL to refund his entire purchase. But AESEL told him that section 75 of the Consumer Credit Act 1974¹ did not apply, because his payment had been made to a third party payment facilitator, not directly to the merchant. A chargeback dispute was raised instead, but the merchant successfully defended it by saying that it had resolved the issue in March 2021; it added that the dispute had been raised far too late under the chargeback time limits. Mr J then brought this complaint to our service.

Our investigator did not uphold this complaint. He didn’t agree with AESEL’s argument that section 75 didn’t even apply. But he thought there was no evidence that the hard drive had been faulty when it was sold. Mr J had been able to use the hard drive for 16 months before it failed. He didn’t think that AESEL was liable for the merchant’s refusal to repair or replace the hard drive under its warranty. So Mr J’s section 75 claim would not have succeeded. And the investigator said that Mr J had brought his complaint a year too late to raise a dispute under the chargeback rules.²

Mr J did not accept that decision. He provided an email he had sent to the merchant in February 2021 in which he’d reported a fault with one of the drives, as proof that it had been faulty from the start. He asked if he could make a section 75 claim against the manufacturer in respect of the warranty, or against the payment facilitator for not vetting the merchants who use it. So this case was referred for an ombudsman’s 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.

The fact that Mr J’s payment went to the merchant not directly, but via a third party, does not necessarily mean that section 75 does not apply to the transaction. For section 75 to apply, there need to be arrangements between AESEL and the merchant for the bank to finance purchases made by Mr J from the merchant. The credit card scheme is there to put such arrangements in place between those participating in it. In this case, the credit card

¹ Section 75 is a law which (if it applies) makes AESEL liable for a breach of contract by the merchant.

² In fact, Mr J’s complaint about the chargeback dispute had already been dealt with by another investigator in a separate case, who had reached the same conclusion. Mr J accepted that decision, and so I will not consider that issue again here.

payment went to the merchant via a payment facilitator, but I think that was under arrangements of the required kind. This is because payment facilitator is a recognised participant in the same card scheme as AESEL, and this model of recruiting and paying suppliers is a common and accepted commercial practice which has evolved over time. I'm sure that AESEL would have contemplated, when agreeing to give Mr J a credit card, that the market for payment services would develop over time and that the card would be used to pay suppliers through the card scheme via any established method which had since emerged. This is one such method. Due to the mutual participation of all parties within the card scheme, therefore, I am satisfied that there was a valid arrangement in place.

It's not in dispute that one of the hard drives that was originally delivered to Mr J was defective, and that this became apparent almost at once. I've seen evidence from both parties that in February 2021, the merchant agreed to send Mr J a replacement hard drive. That appears to have resolved that matter at the time.

The problem did not recur again until 2022, by which time it seems that the merchant was no longer trading, and so that is why Mr J had to approach AESEL. The passage of time makes it rather difficult to conclude that AESEL is liable for the fault. AESEL is only liable for a fault that was present or developing at the point of sale; it is not liable for a new fault that only appears later. And if a fault is found to have been present at the point of sale, then the merchant is entitled (under the Consumer Rights Act 2015) to one attempt to fix it by repairing or replacing the offending item. That attempt was used up in 2021. But I have to be satisfied that the latest problem with the hard drive was already present back in 2021, otherwise AESEL isn't responsible for it.

It doesn't make a difference whether the hard drive which stopped working properly in 2022 is the same one which failed originally, or one of the others. But whether it is the replacement or one of the three originals, Mr J had been using it without trouble between early 2021 and mid-2022 before the latest problem happened. That strongly suggests that it is a new fault, rather than one that was present all along.

For that reason, I don't think that AESEL treated Mr J unfairly by declining his claim for a refund.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr J to accept or reject my decision before 11 December 2024.

Richard Wood

Ombudsman