

## The complaint

Mr M complains that American Express Services Europe Limited (“AESEL”) didn’t refund part of a payment he made and that it made errors while processing his request for a refund.

## What happened

In October 2022, Mr M contacted AESEL to request help in getting a partial refund for a payment he made to a merchant. Mr M had purchased a number of kitchen appliances using his AESEL credit card for a total cost of £5,230. He says he wanted to only dispute two of the appliances as they were faulty and the merchant was not responding to his requests for a refund or replacement. However, AESEL initiated a chargeback for the full amount of the charge.

It doesn’t appear that any progress was made with the chargeback until March 2023, by which time the merchant had already replaced the two faulty appliances (a dishwasher and an extractor fan). It isn’t clear exactly what happened with the chargeback at this point, the merchant appeared to be under the impression that AESEL had given the funds back to Mr M, yet AESEL has also said the chargeback wasn’t successful.

Mr M complained to AESEL about its handling of the chargeback. He said that it had caused numerous issues by attempting to chargeback the full amount, rather than just the amount he was disputing. Further, he said he was under the impression AESEL were going to consider his request for a refund under section 75 of the Consumer Credit Act 1974 (“section 75”) but did not. He said that while he had now received replacement appliances, he was still owed money and AESEL hadn’t assisted him.

AESEL agreed that it hadn’t handled Mr M’s request for a refund well. By way of apology, it credited his credit card account with £200 compensation.

I sent Mr M and AESEL my provisional decision on 9 October 2024. I explained why I thought the complaint should be upheld. I said:

*Mr M says that AESEL’s handling of his refund request was poor and that it still hasn’t considered his claim under section 75 as he has asked. I agree that the way AESEL handled the initial refund request should have been better. AESEL appears to accept that it should have spoken to Mr M to understand exactly what the dispute involved and whether it was the whole amount of the transaction that was the issue before attempting the chargeback. The fact that AESEL didn’t do this resulted in the merchant threatening Mr M with legal action when the full amount was taken back from the merchant.*

*AESEL’s actions contributed to increased tensions between Mr M and the merchant making it more difficult to resolve the underlying dispute. This could have been avoided if AESEL had sought to discuss Mr M’s dispute with him before simply processing it as it saw fit. The resulting exchanges with the merchant were both unnecessary and time consuming and will undoubtedly have caused Mr M a degree of distress.*

*Further, it doesn't appear that AESEL offered much in the way of support to try and resolve things when Mr M highlighted the errors it made. I note that even after Mr M and the merchant had resolved the bulk of their dispute, Mr M still asked AESEL to help recover some additional costs under section 75 that he felt he was owed by the merchant. However, AESEL appears not to have engaged with Mr M in a productive way to try and resolve those outstanding issues.*

*Taking all of that into consideration, I don't think the £200 compensation AESEL has paid is sufficient to account for the distress and inconvenience it has caused to Mr M. I consider an amount of £350 to be fair and reasonable in these circumstances.*

*I've also considered whether AESEL has acted fairly and reasonably in not providing Mr M any refund following his claim and complaint under section 75. While AESEL may not have explicitly responded to Mr M's claim, I'm satisfied he made one and that he complained about AESEL's failure to respond to that claim.*

*The general effect of section 75 is that if Mr M has a claim for breach of contract or misrepresentation against the merchant he purchased goods from, he can bring a like claim against AESEL (as the linked provider of credit). There are other criteria that also need to be met for a section 75 claim, however, I'm satisfied those are met here.*

*Mr M says that he had to pay to have the faulty extractor fan removed and the replacement installed, and he also lost £99 on the replacement dishwasher and £45 on filters that the merchant had promised to provide.*

*There is no dispute that the extractor fan was faulty and that the merchant provided a replacement. I'm satisfied there was therefore a breach of contract as the original goods Mr M ordered were defective. While the merchant had attempted to remedy that breach by providing a replacement, Mr M incurred consequential financial losses directly flowing from that breach of contract which have not been remedied by the merchant.*

*Mr M needed to pay his electrician to fit the replacement extractor fan, something he wouldn't have needed to have done if the original goods had been of satisfactory quality. Mr M doesn't have an itemised invoice for this fitting from his electrician as Mr M had other electrical work completed at the same time and paid one global price for all the work.*

*However, his electrician has separately provided him with a quote as to what it would cost to replace the extractor fan now, which is £100 plus VAT. The merchant appears to have originally agreed to cover £100 towards Mr M's installation cost (although it never then paid this to Mr M), so it seems that the quote Mr M has provided is a reasonable estimate for what the work is likely to have cost. I therefore think it's fair and reasonable that AESEL now refunds Mr M £120 (the cost of the installation inclusive of VAT). As Mr M has been out of pocket for this amount, AESEL should also add 8% simple interest per year on that refund from the date Mr M paid it (in December 2022) to the date of settlement.*

*Mr M says that the replacement dishwasher was a cheaper model and the effect of this is that he lost a 'volume discount' of £99. He says he received a £99 discount on the original appliance as he had made a volume order of several appliances. However, he did not receive a similar discount on the replacement dishwasher.*

*I understand Mr M did receive a refund from the merchant for the difference from*

*what he paid for the original dishwasher and the cost of the replacement. Mr M says that he lost the benefit of a discount which he received on the more expensive original. While I can accept that Mr M may have received a £99 discount originally that was not applied to the replacement product, I'm not currently persuaded that this is a loss AESEL might be reasonably liable for.*

*I say this because there is insufficient evidence to demonstrate that the dishwasher was discounted by £99 originally. But even if I could be satisfied that it was, there is nothing to show how the volume discount worked globally across the whole contract Mr M entered into with the merchant. It isn't clear that Mr M would have qualified for any volume discount (or a discount to the same level) if the replacement dishwasher had formed part of the original contract instead.*

*I note that in an email Mr M sent to the merchant he said "It would therefore be appreciated if you could consider compensating me for the loss of discount when you reorder an extractor please?" This suggests that Mr M wasn't expecting to be automatically entitled to any discount on the replacement dishwasher. Further, in a later email he said "Please set up a payment request again for the full amount minus your agreed compensation for my installation costs and filters refund." Mr M then went on to ask the merchant to confirm that this would resolve all outstanding issues and claims. So, it seems to me that at this stage Mr M was not expecting to receive the £99 discount, nor was he contesting it.*

*Overall, I've not seen enough to persuade me that Mr M was contractually entitled to receive the £99 discount on the replacement dishwasher or that the breach of contract resulted in him losing out on this when he should have otherwise received it.*

*Lastly, it seems the merchant had agreed to refund the cost of filters for the extractor fan, which don't appear to have been refunded. Mr M has said the cost of these was £45, although I've seen no independent evidence of that. As a refund had been agreed, I think it's fair and reasonable that AESEL refund that to Mr M if he can provide evidence of them forming part of the original contract, what they cost and that he paid for them. AESEL should also add 8% simple interest on that refund from the date Mr M paid for them to the date of settlement.*

*If Mr M didn't originally pay for the filters and this was simply a gesture of goodwill offer made by the merchant, then I don't consider that AESEL needs to provide the refund. This is because it won't therefore have formed part of the original contract that AESEL financed.*

AESEL accepted my provisional decision, as did Mr M although he provided some additional commentary and clarification. In summary, he said that had AESEL processed his claim for a refund correctly, he would have received a full refund for the dishwasher allowing him to purchase one of his choosing. Instead, he was left to accept an inferior machine as a replacement from the merchant and incur a loss on the volume discount. Mr M said he received 10% discount on each appliance and there is no reason he shouldn't have received it off the replacement appliance too. He said that he now realises a 10% discount would have been £57, not the £99 he originally stated.

Lastly, Mr M said that due to the service failings by AESEL he chose to cancel his credit card account to avoid paying further annual fees given he didn't feel he had received the service he was entitled to. He said it would be reasonable for AESEL to now reinstate his cancelled credit card.

## **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.

Having done so, I've reached broadly the same outcome I reached in my provisional decision and for similar reasons. However, I'll address the additional points Mr M has raised.

I note Mr M has now provided evidence to show that the filters did form part of the original contract and he paid £45 for these in September 2022. As set out in my provisional decision, I therefore think it's fair and reasonable for AESEL to refund this cost to Mr M, adding 8% simple interest per year from the date he paid for them to the date of settlement.

I accept that the replacement dishwasher was of an inferior specification to the original Mr M had agreed to purchase. I'm also satisfied that it was cheaper. However, I understand Mr M did receive a refund of the difference in price.

I've thought about what Mr M has said in relation to being able to receive a cash refund instead had AESEL processed his refund request promptly and appropriately when he first raised it. While that's possible, I also need to take into account that Mr M has accepted a replacement from the merchant and a refund for the difference in price as a remedy for that breach of contract. It's also not clear whether Mr M could have negotiated a cash refund (instead of a replacement) with the merchant at the time. In any event, and notwithstanding any delays or errors in the way AESEL processed Mr M's request for a refund, as the breach of contract was remedied, I can't see that it would be fair and reasonable for me to direct AESEL to do anything more in relation to that replacement.

Mr M says that he should also have received a 10% discount on the replacement appliance. However, as I've said in my provisional decision, I don't have enough to demonstrate that this was more likely than not to be an automatic entitlement as part of the original contract. I accept what Mr M has said about the content of the email communications between him and the merchant but ultimately I don't have enough to show he has not received something he was contractually entitled to receive. For this reason, I don't think AESEL need to provide any further refund on the price of the replacement dishwasher.

Overall, I'm satisfied there was a breach of contract by the merchant, and AESEL as the credit provider, ought to put things right. This should be by refunding the costs Mr M incurred as a result of the breach, which was the installation cost of the extractor fan and the cost of the filters along with 8% simple interest per year from the date Mr M made each of those payments to the date of settlement.

AESEL also handled Mr M's request for a refund poorly and made matters more difficult to resolve between him and the merchant. For that reason, it should compensate him for the distress and inconvenience its actions caused and I consider a total payment of £350 to be fair and reasonable.

Lastly, Mr M says that he would like AESEL to reinstate his credit card account. This is something Mr M would need to discuss separately with AESEL as it wouldn't be appropriate for me to direct that it opens a line of credit for Mr M, particularly as AESEL are required to comply with the regulator's rules and guidance on responsible lending before opening any credit facility.

## **My final decision**

For the reasons given above, I uphold this complaint and direct American Express Services

Europe Limited to:

- Refund £120 to cover the costs of the installation of the replacement extractor fan, adding 8% simple interest per year from December 2022 to the date of settlement.
- Refund £45 representing the cost of the filters, adding 8% simple interest per year on that refund from September 2022 to the date of settlement.
- Pay a total of £350 compensation for the distress and inconvenience caused.

If AESEL considers tax should be deducted from the interest element of my award, it should provide Mr M with a certificate showing how much it has taken off so that he can reclaim that amount, if he is eligible to do so.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision before 5 December 2024.

Tero Hiltunen  
**Ombudsman**