

The complaint

Mr P complains about the way American Express Services Europe Limited (“AESEL”) handled a claim he made in respect of a transaction made with his credit card.

What happened

Mr P used his AESEL credit card to purchase some goods from a retailer, who’ll I’ll refer to as “R”. Mr P told this service that he placed an order for five items and when he received the parcel, two of the items were missing.

Mr P said he was unhappy with how R dealt with the matter and so he returned the three items he received and wanted a refund of the amount he paid for all five items. R didn’t refund him for the two items he said were missing from the order and so he got in touch with AESEL to make a claim.

Mr P says that AESEL mishandled his claim – he said that AESEL incorrectly stated that he ordered seven items and received five, it incorrectly recorded the claim for items as “Not as Described or Defective Merchandise”, and the evidence AESEL had relied on only showed his parcel had been delivered and didn’t prove that items weren’t missing from that parcel. Mr P adds that the mishandling of the claim caused the claims to be incorrectly closed down on several occasions without consideration of the crux of the issue. As a result, Mr P says AESEL has caused him distress and inconvenience, as well as being out of pocket for the items that weren’t received. Mr P adds that AESEL haven’t complied with its Consumer Duty obligations when dealing with his claim.

AESEL didn’t uphold Mr P’s dispute. It said it had received sufficient evidence from R which showed the five items were sent by R to Mr P. It didn’t process Mr P’s dispute as a Section 75 claim, it said it hadn’t done this because Mr P didn’t ask it to, and in its final response to Mr P, it explained how he could raise a Section 75 claim if he wanted to do that.

Our Investigator didn’t uphold Mr P’s complaint either. They felt that AESEL had correctly followed the chargeback process and had acted entirely appropriately in deciding not to pursue it further. The Investigator explained that they hadn’t seen a clear breach of contract that ought to have led AESEL to consider Mr P’s claim under Section 75, and they felt that AESEL had explained to Mr P what he needed to do if he wanted to make a claim under Section 75. The Investigator didn’t find that AESEL had mishandled Mr P’s complaint.

Mr P didn’t agree with the Investigator and so 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.

Having considered everything available to me I won't be upholding Mr P's complaint. I appreciate this decision will come as a disappointment to him, however I will explain my reasons for this below.

I'm sorry to have read of the issues Mr P has had with R. However, as AESEL aren't the supplier of the goods, I can only consider whether it acted fairly and reasonably in light of its role as the finance provider.

In deciding if AESEL has acted fairly and reasonably, I have thought about the ways it could have helped Mr P get a refund for the items he says he didn't receive. In this case, I consider the chargeback process and Section 75 of the Consumer Credit Act 1974 ("Section 75") to be relevant.

Chargeback

The chargeback process provides a way for the card issuer – in this case AESEL – to help a customer claim a full or partial refund of the amount they paid on their card, if certain things go wrong with what they've purchased.

The process is overseen by the card scheme – in this case, AMEX. Card schemes set out various rules covering things such as what sort of scenarios are eligible for chargeback, the kind of evidence required, and the timescales for a chargeback to be raised.

Generally speaking, it is good practice for a card issuer to attempt a chargeback where the right exists and there's some prospect of success. That said, they're not guaranteed to be successful, and a consumer is not able to demand that their card issuer attempt one. A chargeback can be defended too; the party which received the payment – in this case R – can resist a chargeback attempt. If neither the consumer nor the merchant concedes then, ultimately, the card scheme itself can be asked to rule on the dispute in a process called arbitration.

AESEL raised Mr P's dispute under the chargeback scheme, and I have considered what both parties have said about the chargeback along with the wider evidence about the scheme rules to decide if AESEL acted fairly and reasonably in handling the claim.

I can see Mr P raised the dispute using an online form. He selected the option on the form to say, "I haven't received my goods or services, or the business has cancelled my goods or services", and the option "I have only received part of my order/service". AESEL started the chargeback process on this basis.

AESEL received a detailed response from R to support its view that it had packaged and sent the five items Mr P had ordered. R confirmed that all items had been sent from its automated warehouse where they were picked, packed and the parcel sealed without human intervention. R provided a photo of the five items Mr P ordered in the box and said the photo had been automatically taken as the package was being sealed for dispatch. R also provided AESEL with evidence of the weight of the parcel when it was sent, and photo evidence of the parcel arriving to Mr P, showing the parcel wasn't damaged. Mr P also confirmed the parcel arrived undamaged.

Based on the evidence provided by R, AESEL took the decision not to continue with Mr P's dispute and it charged the cost of the missing items back to Mr P's credit card.

Where the merchant defends a claim, it is up to AESEL to decide whether or not to take the dispute further and ultimately on to arbitration to be decided by AMEX – and it would usually only do this if it thought it had a reasonable prospect of success. I can't know for certain

what view AMEX would have held had the chargeback been taken to arbitration, however, I think on balance, R's arguments and evidence would have been favoured over Mr P's.

I say this because R's evidence shows the five items were boxed. It shows the weight of those five items, which also correlates with the couriers weighing of the items. And that the box was delivered without being damaged or appearing to have been tampered with, which was also confirmed by Mr P. It is my view that the evidence points to it being more likely than not that the five items Mr P ordered were packed and sent.

Mr P isn't satisfied that it can be conclusive that the weight R recorded for the package is the weight of the package with the five items he ordered in it. He says that AESEL and this service ought to check the weight of the items he returned, as this could allow us to determine if the missing items were in the package when it was weighed and sent. Both the Investigator and I have found that the weight of the parcel is around the weight I would have expected it to be with all five items inside, after doing some research. I wouldn't have expected AESEL to do more in determining the weight of the returned parcel, as I'm satisfied that the weight when it was sent was more likely to have included the five items ordered. Mr P has also had the opportunity to provide evidence of the weight of the parcel from when he returned it, but I haven't seen such evidence.

Mr P has said that more should be done to check that there wasn't a problem with the automated system that picked, packed, sealed and dispatched the items. But AESEL aren't required to forensically gather evidence in the way that Mr P has suggested it does. In addition to this, there is no evidence which points to a problem with the automated system – from what I can see, the evidence shows the automated system picked and packed the items Mr P ordered. The weight of the package is around the weight I'd expect it to be after having researched the individual weights of the items ordered. So even if AESEL did do more here, which to be clear it wasn't required to, I don't think it likely it would find a problem with the automated system.

I have noted Mr P's concerns that AESEL processed his chargeback using the wrong code. Even if it had used the wrong code, I don't think the outcome would have been different in this case given the weight of the evidence R has provided.

Based on everything I've seen, I'm satisfied that AESEL acted fairly and reasonably when it considered Mr P's chargeback.

Section 75

AESEL didn't raise a Section 75 claim for Mr P, as he says he wanted it to do. I've thought about whether this is fair in the circumstances, and I think it is.

Section 75 allows Mr P to make a claim against AESEL in respect of the items he bought using their credit. However, for Section 75 to apply, certain criteria need to be satisfied relating to things like the parties to the transaction, the way the payment was made and the cost of the goods. I am satisfied this is met and Section 75 applies here.

I would have expected AESEL to have considered Mr P's dispute as a Section 75 claim if it had evidence of a possible breach of contract. But in this case, I've not seen any persuasive evidence of a breach in contract, for broadly the same reasons I've set out above. So, while AESEL could have considered the claim under Section 75, I don't think it was unreasonable of it to have not done this. And in addition, I haven't seen any evidence that makes me think that a Section 75 claim would have been successful.

Customer Service

Mr P says that AESEL mishandled his claim. He says that AESEL got the information about the dispute wrong – initially stating that he said he had ordered seven items and only five arrived.

I've looked at the information AESEL were provided about the dispute. From looking at AESEL's dispute process, Mr P could have raised a dispute by either completing an online form, or by contacting AESEL by phone. AESEL have provided this service with evidence that the online form was completed, so I think it more likely that this is the way Mr P raised the dispute, although I have noted that Mr P says the dispute was raised on his behalf through an online chat function.

The information submitted on the online form states *"I purchased 7 items from merchant. I received only 5 items. I raised a disputed [sic] with the merchant but they said they packaged all 7 items"*. And so this is the information AESEL used when it first looked into the dispute. It isn't entirely clear what's happened here, given that AESEL's records show that the online form was used to raise the dispute. But I think AESEL continued with the dispute based on the information it had, on balance, I don't think it has done anything wrong.

Later, once AESEL had the correct information about Mr P's dispute, it contacted R again as I would have expected it to. And it used this evidence to decide not to continue with Mr P's dispute.

While Mr P might have been frustrated with the process, I haven't seen anything that persuades me AESEL has done anything wrong here.

I've also considered the Consumer Duty which was introduced by the Financial Conduct Authority (FCA) and sets a higher standard for firms in terms of how they are interacting with their customers. It applies to events from 31 July 2023, so it applies to this case.

The Duty requires firms to act to deliver good outcomes for retail customers, in part by helping customers to avoid foreseeable harm. Amongst other things the Duty expects firms to support their customers by helping them make informed decisions about their products and services to achieve their financial objectives.

In this case, however, there are specific rules relevant to the circumstances of Mr P's complaint, which AESEL has an ongoing requirement to follow. These are the chargeback rules and Consumer Duty doesn't override how a firm applies these rules. In any event, for the reasons I've already set out above, I don't think AESEL did anything wrong when investigating the dispute and handling Mr P's request for a refund. So I'm not persuaded in this case that AESEL needed to do anything more for Mr P in light of Consumer Duty.

My final decision

For the reasons set out above, I don't uphold Mr P's complaint.

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

Sophie Wilkinson
Ombudsman