

## **The complaint**

Mr S is unhappy with how American Express Services Europe Limited (AESEL) handled a quality of goods claim he made to them.

## **What happened**

Mr S purchased a pair of headphones from an online marketplace I shall call "W" on 17 January 2023 for £472.44 using his AESEL credit card. However he felt the headphones were misrepresented because he didn't consider them lightweight or comfortable as stated in their online description. He says that due to the quality of the brand he allowed time to see if the headphones would offer the promised comfort over time.

However after many months of use and not seeing any improvement, Mr S contacted W to arrange the return of the headphones. This was declined by W as it was outside their time limits for return of goods under their terms and conditions.

As Mr S didn't accept this, he contacted AESEL on 7 December 2023 to raise a chargeback claim against W and a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against AESEL.

AESEL declined Mr S's chargeback claim as they said this was outside the card scheme time limit of 120 days from the date of receipt of the headphones.

They also said that from Mr S' submissions his S75 claim was regarding an issue of possible misrepresentation. However they didn't believe there was sufficient evidence for a successful claim following their review of the headphones description and Mr S' comments on why he felt they weren't as described.

Mr S was dissatisfied with this response and therefore raised a complaint with AESEL on their handling of his claim. AESEL sent their final response to Mr S on the matter on 23 February 2024 saying they didn't think they'd done anything wrong and that they had insufficient evidence of misrepresentation (or a breach of contract) by W. As Mr S didn't agree, he referred his complaint to our service on the same day.

One of our investigators looked at the complaint and came to the view there was insufficient evidence the headphones had been misrepresented and weren't of a satisfactory quality. They also said that the experience of discomfort suffered by Mr S was subjective and not an indication that the headphones were faulty.

They also noted Mr S used the headphones for over six months before W was contacted for a return. Our investigator felt W's return policy hadn't been followed and with insufficient evidence of the goods being faulty, W hadn't breached their terms and conditions in declining the return of the headphones.

They therefore concluded AESEL were entitled to decline Mr S' claim and need not do anything more.

Mr S didn't accept the investigator's view and so his complaint has been passed to me for review and 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.

I've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that AESEL aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Mr S paid for the headphones using his credit card, both chargeback and a S75 claim could possibly help him. So in deciding what is fair and reasonable I've focussed on this.

### *Chargeback*

There is no requirement for AESEL to raise a chargeback, but it's often good practice to do so. However, a chargeback isn't guaranteed to succeed and is governed by the limitations of AESEL's card scheme rules. I've considered these chargeback rules in deciding whether AESEL acted fairly.

I note that Mr S' chargeback claim would fall under 'not as described or defective merchandise'. However the claim would need to be made within 120 days from the date of the transaction under AESEL card scheme rules. As the headphones were purchased in January 2023 and the claim was raised with AESEL in December 2023, this would be outside the required timescales for a chargeback claim.

Therefore I'm satisfied AESEL did nothing wrong in not raising a chargeback claim on behalf of Mr S.

### *S75*

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

Before I comment on this, I must briefly note the necessary debtor-creditor-supplier agreement needs to be in place for a valid S75 claim under CCA. While AESEL hasn't commented on this, they've said that W is an online marketplace.

For there to be a valid debtor-creditor-supplier agreement there need to be arrangements between AESEL and W for them to finance purchases made by Mr S from W. The card scheme is there to put such arrangements in place between those participating in it. In this case, the credit card payment went to the supplier via W but I think that was under arrangements of the required kind. This is because processing credit card payments to suppliers in this way is a widespread and accepted commercial practice which has developed over time and is either accommodated by or specifically permitted by the major card schemes. I think the AESEL scheme has developed in a way which brings transactions to suppliers via online marketplaces into its arrangements.

AESEL would have contemplated, when agreeing to give Mr S a credit card, that the way in which credit card payments were made would develop over time, and that the card would be used to pay suppliers in any way accommodated by the relevant card scheme. This is one such method, and due to the mutual participation of all parties within the card scheme I think there was a valid debtor-creditor-supplier agreement in place.

With this in mind, and in order to then consider if Mr S has a valid claim, AESEL would've needed to consider all relevant evidence with regard to the alleged misrepresentation. As a part of Mr S' claim submissions to AESEL, he provided a link to the product description on W's website.

I've reviewed this and while the description may have changed due to the time elapsed, I note it now says '*Indulge in luxury comfort*' referring to the soft ear cushions, adjustable headband and ergonomic design. Mr S did provide a screenshot from the website from the time of his purchase and I see that it says: '*All day comfort with a noiseless design*'.

Mr S has said that he is unable to wear the headphones comfortably all day and therefore the item has been misrepresented. In fact he notes he isn't able to wear the headphones without discomfort for more than one hour and therefore it's significantly less than what is stated in the description.

The Consumer Rights Act 2015 (CRA) is relevant to this complaint. This says that the goods must be of satisfactory quality when supplied. This would mean the item would need to be of a standard that a reasonable person would regard as acceptable. In this case Mr S hasn't provided any evidence of the headphones suffering any fault beyond the fact he found them uncomfortable after a short period of using them.

On the issue of comfort itself, this will depend on individual tolerances for the size, shape and weight of the headphones, dependant of course on the consumer's own head shape. In this case the headphones clearly weren't suitable for Mr S in terms of his preferences for how the headphones should feel. However that in itself wouldn't be enough for me to consider the headphones weren't of satisfactory quality.

With this in mind, Mr S has said the headphones were misrepresented by W due to its description of providing 'all day comfort'. While I appreciate Mr S didn't receive this level of comfort and was only able to wear the headphones for a short period, I don't think it's reasonable to consider the description as a promise they'd be comfortable for every single consumer. It seems more of an illustration of the level of luxury and comfort offered by these particular headphones.

However it's clear these headphones may not have been suitable for Mr S, and therefore a return and refund would've been most appropriate.

I see W offers the opportunity to return goods within 30 days of delivery. However Mr S says he chose to continue using the headphones over the following months with the hope that he may be able to wear them for longer over time.

As this didn't occur, he then raised this with W many months outside the return period and was told a return was no longer possible.

I can't say W did anything wrong here in declining the return as it was outside the required period within their terms and conditions. I think it would've been more reasonable for Mr S to have returned the item within the required time limits if he was dissatisfied by the purchase. I consider that the 30 day period would've been appropriate for Mr S to determine if the headphones were appropriate for his needs.

With everything considered it doesn't appear to me there was a breach of contract or misrepresentation by W here. I therefore can't conclude that AESEL acted unreasonably in rejecting Mr S' S75 claim.

**My final decision**

For the reasons above I don't uphold this complaint

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr S to accept or reject my decision before 23 January 2025.

Viral Patel  
**Ombudsman**