DRN-5251269

## The complaint

Mr B complains that AMERICAN EXPRESS SERVICES EUROPE LIMITED ("AESEL") rejected his claim under section 75 Consumer Credit Act 174 ("s.75").

## What happened

In March 2023 Mr B and his partner (Miss F) visited a car showroom and a second-hand car was purchased. A deposit of £500 was paid by Mr B's partner using her AESEL credit card. The credit card account was in Mr B's name and Miss F held a secondary card. The car cost £ 29,265 and had a recorded mileage of 58,463 mile. The balance was funded by a transfer from Mr B's bank account and a trade in.

The vehicle order form and the sale and purchase invoice show the car was purchased by Miss F. She is also the registered keeper and subsequent service invoices are also made out in her name. The car was insured with her as the main driver and Mr B was shown as an additional driver. In his claim Mr B said that Miss F is the primary user, but the vehicle was jointly owned and used by both.

In April 2024, when the car had covered some 80,000 miles the car suffered a catastrophic engine failure and the car was repaired at a cost of £10,800. The invoice for this repair is in Mr B's name.

Mr B made a s.75 claim on the basis the car wasn't of satisfactory quality at the point of purchase. He said the engine should be capable of covering 200,000 miles and supplied a report from the garage which had carried out the repair. AESEL rejected the claim as it considered there was no debtor-creditor-supplier ("DCS") agreement in place. AESEL also rejected Mr B's subsequent complaint. He then brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld.

Mr B asked that his complaint be considered by an ombudsman. He said that it was sufficient that he had a benefit of the car which was demonstrated by the fact he was shown as an additional driver on the insurance policy. He also referenced a decision made by a colleague in another case.

## 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 do not consider I can uphold this complaint. I will explain why.

The claim was made under s.75. When someone makes a payment on their credit card, in order to make a valid s. 75 claim against their credit card issuer they need to have used the credit card to pay a company they have a claim against for breach of contract or misrepresentation. S. 75 gives the debtor (the credit card account holder) the same claim against their credit card issuer as they would have against the supplier of goods or services, so long as that claim is for breach of contract or misrepresentation.

This is because s. 75 itself is worded in the following way:

“If the debtor under a debtor-creditor-supplier agreement falling within section 12(b) or (c) has, in relation to a transaction financed by the agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, he shall have a like claim against the creditor who, with the supplier, shall accordingly be jointly and severally liable to the debtor.”

The key issue in this complaint is whether there is a clear DCS agreement?

Mr B has said the car is jointly owned, but despite a significant contribution coming from his bank account I cannot see that it can be said that he is the legal owner. The sales agreement documentation shows the sale was made to Miss F and if there was ever a legal dispute concerning the car action would be taken against Miss F and not Mr B. He would have no legal responsibility for the car. That means there is no direct link between Mr B and the supplier in terms of it having sold the car to him. It did not do so.

It is also clear that the credit card account is in Mr B’s name and so Miss F is not the debtor. She holds a secondary card which allows her to make use of the account, but she is not responsible for the payment of any sums due on the account.

Mr B has argued that it is sufficient that he derives some benefit from the purchase to allow it to come within the DCS requirements of s.75. It is generally accepted that in certain circumstances where a purchase is made by the secondary card holder the main card holder derives benefit and so that is sufficient to bring him into the ambit of s.75. The example often quoted is where a family holiday is bought by the secondary card holder and the main card holder is one of the holiday party.

I have noted the ombudsman’s decision referenced by Mr B and I am also aware of many other decisions which reached a different conclusion. Each case is decided on its own facts and merits and I am not obliged to follow the outcome reached in another case not least because the facts are different.

Our investigator noted Mr B and Miss F lived apart. I note the distance between the two addresses is over 80 miles. Mr B has explained that he had sold his house to a relative some two years previously and was living with Miss F. However, he had no documentary proof of this. He explained that he didn’t want a change of address to be shown on his credit history so he hadn’t updated any records. He supplied one official document which was addressed to him care of Miss F’s address. Overall, I am not persuaded there is sufficient evidence to show he had moved. However, that of itself does not deny his claim that he derived some benefit from the purchase, but it is not supportive of that claim.

It is clear that money towards the purchase came via his bank account and it is possible that he funded the cost of the purchase. I cannot say what lay behind the ultimate funding of the car, but assuming he did make a significant contribution that of itself does not show he obtained any benefit.

Mr B has accepted that the car was for the primary use of Miss F and the fact he is shown the insurance document indicates he has benefit from the purchase. The question is whether Mr B being able to use the vehicle as a second driver is sufficient to say that he had benefit from the purchase. I presume from what Mr B has said that he owns his own car. Simply being shown as an additional driver on the insurance policy does not, of itself, show that he derived benefit from the car. He may have made use of the car, but I am not persuaded this is enough.

In taking that view I have noted that a claim under s. 75 was considered recently by the

Court of Appeal in the case of Cooper v The Freedom Travel Group and Bank of Scotland Plc (trading as Halifax) [2022] EWCA Civ 1557. The facts are somewhat different and the point at issue relates to the understanding of who was a debtor in the agreement, but the decision shows that the Courts are reluctant to widen the scope of s. 75.

I believe that in considering Mr B's claim I need to take due notice of the Courts' narrow interpretation of the relevant law. Having done so I do not consider that Mr B having sone access to the car is enough to demonstrate to AESEL that he had benefit and as such I cannot say that it was wrong to reject his claim.

**My final decision**

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr B to accept or reject my decision before 22 June 2025.

Ivor Graham
**Ombudsman**