

## **The complaint**

Mr P complains that American Express Services Europe Limited ("AESEL") failed to properly handle his claim regarding damaged kitchen goods.

## **What happened**

On 25 May 2023 Mr P ordered a new kitchen from a retailer ("the Merchant"). This was done via an account held by his kitchen fitter. Mr P has explained he was unaware of this. Mr P paid using his AESEL credit card and the cost was £8,537.23. Mr P found several components were damaged, some were incorrect and some surplus so he contacted the Merchant. It refunded him £115.37. Mr P did not consider this was sufficient. He asked for a breakdown but the Merchant refused as the order was on the fitter's account.

Mr P contacted AESEL via its online chat system in June 2023 having failed to make progress with the Merchant. In a later chat on 20 September 2023 he asked if there was any time limit for making a claim and he was told no.

He continued to talk to the Merchant and his fitter, but both blamed the other. As matters remained unresolved he went back to AESEL in February 2024. He was then told it was too late to make a chargeback, but AESEL considered a claim under section 75 Consumer Credit Act 1974 ("s.75").

AESEL thought that the required debtor-creditor-supplier ("DCS") agreement was not in place. It also considered there was insufficient evidence that there had been either a breach of contract or misrepresentation as required by s.75.

Mr P brought a complaint to this service where it was considered by one of our investigators who didn't recommend it be upheld. Mr P didn't agree and asked that it be referred to an ombudsman.

## **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 have every sympathy with Mr P, but I do not consider I can uphold his complaint. I will explain why.

There are two main issues, the handling of the claim and the outcome of the claim. I have looked at the online chat exchanges and on 20 September Mr P asked "*...how long do I get to be able to open a dispute or is it forever?*" The response was: "*You can open the dispute anytime you want...*" Chargeback claims like this one have a 120 day time limit from the date of the transaction and so at that point a chargeback was not an option, but a claim under s.75 was and this was explored by AESEL. So the answer from AESEL was not wrong, but it was incomplete and to a certain extent it was misleading. I can see that AESEL has accepted that and paid Mr P £50 which I consider to be fair.

I don't believe Mr P's claim was undermined by this exchange. The date for a chargeback had already passed and he still had a route to make a claim via s.75.

Looking more closely at the chargeback option I doubt of this would have succeeded if it had been made in time. Chargeback allows for a refund to be made of money paid with a credit or debit card in certain scenarios, such as when goods have been paid for and not received. A consumer cannot insist on their card company attempting a chargeback, but I would expect it to attempt one, as a matter of good practice, if there was a reasonable prospect of succeeding and to do so would be compliant with the rules of the card scheme to which the card belongs.

Mr P has explained that the Merchant blamed the fitter and the fitter blamed the Merchant. It is clear to me that the Merchant would have challenged any chargeback and given the lack of evidence I cannot see AESEL would have had any basis to take this to appeal. So, I do not consider that Mr P lost out due to a delay in AESEL considering a chargeback.

The other means by which Mr P could obtain recompense is via 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 required DCS agreement can be broken by a fourth party being part of the agreement. Routing the purchase via the fitter's account could have caused the DCS agreement to be broken even if Mr P was unaware of that. I have seen a quote sent by email to Mr P, but no contract or agreement so it is possible that the required DCS agreement was not in place and it was reasonable for AESEL to have told Mr P that without a copy of the agreement it could not be satisfied there was a DCS agreement. I accept that it is quite possible there was a valid DCS agreement, but Mr P was seeking money from AESEL and it was incumbent on him providing the clear evidence to support his claim.

However, if I was to assume there was valid DCS agreement in place I have not seen evidence to show either misrepresentation or breach of contract by the Merchant. Mr P has not provided much documentation from the Merchant regarding the purchase and no contract or agreement. That makes it difficult to show that there was a breach or misrepresentation. I have not seen a detailed list of what was damaged and how it was damaged. Nor was any photographic evidence supplied. It is clear that the Merchant does not accept there was damage beyond the issues for which it paid a refund.

It is regrettable that two parties were involved in the supply and fitting of the kitchen as this makes it difficult for Mr P to establish who was responsible for any of the damage. My role does not give me power over the activities of the Merchant or the fitter. I can only consider the handling of the claim by AESEL and I have to consider if it acted fairly and reasonably in its dealings based on the information Mr P provided. Quite simply I do not think AESEL did anything materially wrong.

**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 P to accept or reject my decision before 14 May 2025.

Ivor Graham  
**Ombudsman**