

The complaint

Mr S complains that AMERICAN EXPRESS SERVICES EUROPE LIMITED ("AESEL") rejected his claim under Section 75 Consumer Credit Act 1974 ("s.75").

What happened

In July 2021 Mr S purchased goods at a cost of £984 from a merchant via an intermediary using his AESEL credit card. He was unhappy with the quality of the goods and after exchanges and replacements were provided by the merchant which he found unsatisfactory he contacted AESEL. In October 2023 he asked AESEL to make a chargeback. It explained that the time limit for it doing so had expired. He repeated his request several times and he says he was advised to contact the intermediary. It was unable to assist and suggested Mr S contact AESEL's s. 75 team to make a claim.

In June 2024 Mr S did as suggested and AESEL asked for supporting documentation and an independent assessment of the goods. He didn't consider this was reasonable since the goods had been dismantled and stored in a garage for some 10 months. He felt the information and documentation he had provided in connection with his chargeback requests should be sufficient. He was also asked for a full copy of the guarantee which came with the goods. His subsequent complaint was rejected by AESEL and he contacted this service. He said he had been let down by the merchant which had offered a three-year guarantee which it had failed to honour. He also wished to complain about AESEL's handling of his earlier claims as well as the s.75 claim.

Mr S brought an earlier complaint to this service about AESEL's handling of the chargeback and a colleague concluded that AESEL had not done anything wrong in its handling of the chargeback.

Mr S' second complaint was considered by one of our investigators who didn't recommend it be upheld. She explained that element of the complaint made by Mr S about the chargeback and activities prior to June 2024 had been dealt with in his earlier complaint to this service and she would only be addressing the handling of the s.75 claim.

She didn't consider it unreasonable for AESEL to have asked for an independent report. Nor had she seen any evidence that the goods came with a guarantee and so she couldn't say there had been any misrepresentation by the merchant.

Mr S didn't agree and asked our investigator to ensure she had all the information he had supplied to AESEL. She did so on three occasions and AESEL confirmed it had not received any further material in relation to both the chargeback and the s. 75 claim. Mr S said he had sent photos and videos, but he didn't have a copy of these and AESEL didn't have any record of receiving them.

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 S, but I do not consider I can uphold his complaint. I will explain why.

Mr S' complaint about the handling of the chargeback by AESEL has been considered by one of my colleagues and a final decision issued. This means that I will not be considering that matter in this final decision.

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 debtor in this case is Mr S, because he paid for the goods using his credit card account. The transaction financed by the credit card account was the order of the goods, and the supplier was the merchant. S. 75 says that it is the debtor who needs to have a claim against the supplier in respect of a misrepresentation or breach of contract.

Mr S has asked AESEL to cover the cost of the goods he purchased because they were faulty. In turn AESEL has requested evidence in support of his claim. This is quite reasonable since Mr S is asking AESEL to pay him a sum of money and it is seeking clear evidence that the claim is valid. It is common in such circumstances for the creditor to seek an independent report and if the claim is upheld the cost of the report is covered by the creditor.

In turn it is up to the consumer to provide as much relevant evidence and documentation as possible to support their claim. For example, it is fair for AESEL to have sought a copy of the guarantee since Mr S claimed it had been broken.

Mr S didn't consider this was necessary and brought a complaint to this service. He felt that the material he had submitted previously was sufficient. There is a discrepancy between what Mr S says he sent and what AESEL says it received. However, I have seen both the material Mr S sent AESEL and its log of items received and so I think it reasonable to consider whether AESEL acted fairly based on what it had seen.

Quite simply I think that AESEL did not have clear evidence in support of Mr S' claim. The merchant should provide goods which are fit for purpose and if they do not then this could amount to a breach of contract. An independent expert could look at those goods whether they were dismantled or sitting in a garage and reach a view on whether they had been fit for purpose. However, all that appears to have been established is that the goods have in some way been broken or failed, but not how this had come to happen. AESEL offered Mr S a route to proceed with his claim, but he declined to make use of it or to suggest an alternative. So I cannot say that AESEL did anything materially wrong.

As for the claim of misrepresentation I cannot say that AESEL was wrong to reject this. Mr S has supplied a summary of his purchase with a reference to a 3-year guarantee which gives full peace of mind. I have not seen any more detailed information about this in the material supplied by both Mr S and AESEL. However, I have looked at the merchant's current website and I note that it does offer an extended 3-year guarantee, but it says: "*You must register your extended guarantee within 28 days of receipt of your product.*" I have not seen any evidence that Mr S registered for the 3-year guarantee. So, neither AESEL nor I can say that the merchant was guilty of misrepresentation.

I would add that the guarantee comes with a list of terms and conditions including the following:

"This guarantee covers your product for manufacturing defects only. It does not cover you for issues such as the following: Customer Misuse, Normal Wear & Tear, Accidental Damage, Modification of the product."

I cannot see that AESEL was shown that the damage was such that it fell within the terms of the guarantee.

In conclusion while I appreciate Mr S has had issue with the goods I do not consider he has supplied clear evidence that would allow AESEL to uphold his s.75 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 S to accept or reject my decision before 23 July 2025.

Ivor Graham
Ombudsman