

The complaint

Mr R complains American Express Services Europe Limited (AESEL) failed to take responsibility for the delayed delivery of goods he bought from an online retailer.

What happened

On around 16 November 2023, Mr R ordered a laptop (about £728) and a keyboard (about £207), from the website of an electronic goods supplier, which I'll call 'S'. And he paid for them with his AESEL credit card.

S used a third-party courier to deliver the items to Mr R's home. But Mr R later asked the courier to deliver the items to one of its service points, a local supermarket, for collection. Estimated delivery was 21 November for the keyboard and 24 November for the laptop.

Mr R contacted S on around 25 November 2023 to find out why the items hadn't arrived.

On 27 November 2023, S told Mr R the service point had rejected the items because the order was 'high value'. S arranged with the courier to try again, informed Mr R of what happened, and following Mr R's involvement the courier agreed to deliver the items to his home address on 28 November 2023. He took a day off from work to receive the items.

The items still hadn't arrived by 28 November. Mr R had to rearrange delivery again. The keyboard arrived around 5pm on 29 November, but the laptop didn't arrive until around 9pm on 30 November – after Mr R spoke directly to the courier's depot manager.

Mr R spent a lot of time on calls, web chats, and emails to S and the courier. He feels the delays, poor service and missed deliveries amounts to a breach of contract. He wants AESEL to help him recover compensation from S, either through a chargeback or through a claim under section 75 of the Consumer Credit Act 1974 ('section 75'). He asked for around £400 in compensation, the equivalent to one day's annual leave given his salary at the time.

AESEL didn't think Mr R could recover his losses under either chargeback or section 75, so Mr R referred his complaint to the Financial Ombudsman Service. Our investigator agreed with AESEL. She said Mr R had no right to a chargeback and she didn't think there was a breach of contract.

As Mr R disagreed, the matter came to me for a decision. I issued my provisional decision on 28 January 2025. An extract from that decision is set out below.

What I've provisionally decided – and why

I've considered all the available evidence and arguments to decide what I feel is fair and reasonable in the circumstances of this complaint. This includes the relevant laws, regulations, guidance and standards, codes of practice and good industry practice. And where it's unclear what's happened, my conclusions are based on what I think is most likely to have happened given the information available.

I think it's worth clarifying that I'm deciding whether AESEL acted fairly in assisting Mr R with his dispute against S. I'm not making a finding on the underlying dispute Mr R has with either S or its courier. AESEL did not supply the goods, so when considering what's fair and reasonable, I'm only considering whether AESEL acted in line with its obligations as a financial services provider.

As Mr R bought the goods with his credit card, the main ways open to him for seeking a remedy through AESEL are through a chargeback or section 75 CCA claim.

Chargeback

When someone buys something with their credit card, and something goes wrong, the card issuer can sometimes help them obtain a refund through raising a chargeback. The chargeback process is run by the relevant card scheme – in this case, that would be American Express.

The circumstances under which a chargeback can be raised is limited, because chargebacks only apply to certain types of dispute – for example, where goods never arrived or where goods don't match their description.

I've looked at the types of disputes that can be raised under American Express' chargeback scheme, and the requirements for pursuing them. And I agree with our investigator that Mr R's claim for consequential losses resulting from poor service or late delivery doesn't fall into any of American Express' dispute categories. That doesn't mean Mr R has no valid dispute in law – only that American Express' chargeback scheme doesn't cover his dispute.

It follows that I don't think AESEL acted unfairly by not pursuing a chargeback.

Section 75 CCA

Under section 75 CCA, Mr R can hold AESEL responsible for a "like claim" he would have against S for breach of contract or misrepresentation. Mr R also referred to a contract between S and the courier – but the contract for the purposes of Mr R's section 75 claim only concerns the one between Mr R and S.

Certain criteria must be met for section 75 to apply relating to matters such as the cash price of the goods Mr R bought, and the relationship between the parties to the transaction. I'm satisfied these criteria are met, so the key issue is whether there's evidence of a breach of contract or misrepresentation.

Mr R hasn't alleged any misrepresentation, and I see no evidence of this, so I've not considered this further.

Mr R was mainly unhappy with the courier's failure to deliver the goods, causing what he considers to be unreasonable delays and requiring his intervention to ensure delivery.

As S has the contract with the courier, Mr R feels S is responsible for ensuring its chosen courier delivers his goods within a reasonable time. And as it didn't, he says there's a breach of contract for which AESEL is responsible for – so this is what I've focused on.

Breach of contract

I've carefully considered whether there's been any breach of the terms of the contract between Mr R and S. The most relevant terms to S' delivery obligations are under section D:

“D. Delivery

8. If the estimated delivery date cannot be met... [S] will notify you with a revised estimated delivery date. You are entitled to cancel your order if delivery is not made within 30 days from the original date of your order and you have not subsequently accepted delivery or agreed to an updated delivery date, and obtain a full refund.

9. [S] may ship parts of an order separately...”

These terms allow S to split the order in two, and limit S’ obligations to ensuring Mr R is notified of any changes to an estimated delivery date. I can’t see any term that obligates S to ensure goods are delivered by any estimated dates, which is central to Mr R’s complaint.

After considering these terms, I don’t think S breached them for the following reasons:

- The order process is clear the delivery dates are estimates and aren’t guaranteed. And that S was entitled to split the order in two.*
- Section D8 of the contract doesn’t obligate S to ensure the goods arrive by the estimated delivery date. What it essentially says is if the estimated delivery date changes, S should notify Mr R of any changes.*
- I’m satisfied S did enough to ensure Mr R was aware of any changes. It provided him with a tracking number - giving day-to-day tracking of where the parcel was and the status of the delivery. And when Mr R contacted S for help, S engaged the courier within 48 hours to find out why the delivery was delayed, relayed the reasons to Mr R, and engaged the courier to select an alternative delivery date and address.*
- Mr R proactively arranged alternative delivery dates himself before S’ intervention on occasion. But I’m satisfied that if not for Mr R’s intervention, S would have likely revised the estimated date and updated Mr R of the change within a reasonable time given it usually responded to Mr R within 48 hours, and were sometimes quicker.*
- I’m satisfied S met its notification obligations.*
- I’m also satisfied S delivered the goods within 30 days – this was the maximum time S had to deliver the goods under the terms before Mr R could cancel for a full refund.*

Even if I were wrong about S meeting its notification obligations, and I thought S ought to have been quicker when updating Mr R, I can’t see how he’s been materially impacted as there are no instances of Mr R being unaware of or absent during deliveries to him. In other words, I don’t think this is a case of Mr R being unavailable to take delivery because of some failure on S’ part to update him about any revised delivery dates.

I’ve looked at the rest of the contract, but I haven’t seen anything that persuades me there’s a breach of any other contract term. I’ve also considered if there are terms implied into the contract through other legislation, such as the Consumer Rights Act 2015 (CRA), that might have been breached. I can see the CRA can, in certain circumstances, require goods to be delivered within 30 days. But as Mr R effectively has a maximum 30-day delivery period, and a right to cancel for a full refund under Dell’s terms and conditions if delivery isn’t made within 30 days of the order date, I don’t think this implied term provides much assistance.

I accept Mr R’s main complaint is about delayed and missed deliveries, rather than any

failure to be reminded of estimated delivery dates. He's no doubt frustrated over the time he had to spend ensuring delivery, and had to deal with challenging customer service.

However, the key issue here is whether there's been a breach of contract or misrepresentation by S that AESEL is responsible for under section 75. The scope of what section 75 covers is limited and doesn't include, for example, poor customer service that cannot otherwise be directly linked to a misrepresentation or a breach of contract.

In summary, I don't think there's been any misrepresentation or breach of contract by S, so I don't think Mr R has any remedy under section 75 for the problems he faced with delivery.

Breach of contract losses

I could stop there. But for completeness I've considered whether AESEL would be responsible for any of Mr R's losses had I agreed with Mr R that there was a breach of contract or misrepresentation.

The loss Mr R has specifically sought to recover is the equivalent value of one day's annual leave he took on 28 November 2023. For his salary, he says this was around £400.

I haven't been provided with any evidence of his salary or when he asked his employer for the day off, so I'm not satisfied Mr R has sufficiently substantiated his loss. But setting evidentiary issues aside, I still don't think it's a type of loss S ought to be responsible for.

Mr R is an employee who took paid, rather than unpaid leave. Using up a day's annual leave to take delivery is certainly frustrating and inconvenient, but as there's no direct loss of income here, I don't think a court would likely say there's been a financial loss.

I think a court would likely conclude using a day's leave is an inconvenience or other type of non-financial loss. That matters, because non-financial loss resulting from a breach of contract is generally not recoverable.

Even if I were to consider the loss of one day's annual leave is a financial loss, I think Mr R would have difficulty showing it was a loss that was directly caused by a breach of contract and one that he couldn't fairly mitigate against.

To claim financial loss caused by a breach of contract, Mr R would first have to show his loss wouldn't have occurred but for the breach of contract. I don't think there's any doubt that if the items were delivered by or around the estimated dates, he wouldn't have had to take any annual leave on 28 November 2023 to take delivery.

Additionally, Mr R would also have to show, at the time the contract is formed, that:

- The loss could fairly and reasonably be considered to arise naturally from the breach - in other words, the loss must be reasonably foreseeable and likely to arise; or*
- the parties had special knowledge that meant they knew or reasonably ought to have known the loss would likely flow from a breach.*

I don't think Mr R taking a day's annual leave to receive his order is a type of loss that was reasonably foreseeable and likely to occur in his circumstances. The estimated delivery dates were always subject to change, and the first time Mr R tried to take delivery at his home address was also the day Mr R had taken off from work. I don't think the situation is too dissimilar to a regular customer having their order delivered to their home after having their estimated delivery date pushed back, and making other arrangements to take delivery

without having to take a day off. That could be by having the order delivered while working from home, or during annual leave already taken, or on another morning or weekend, or to a neighbour, or any number of other options that might be available to avoid taking a day off.

I accept Mr R had issues with delivery to his chosen service point during this time, which did cause some delay – but I don't think it reasonable to say these delays would naturally result in him having to take a day off work in light of the above alternatives. And even if I did accept his loss does naturally flow from the delays – Mr R still has a duty to mitigate those losses. So for example, I'd have expected Mr R to explore with S any alternative ways for accepting delivery without having to take a day off, before taking leave. I don't think Mr R sufficiently attempted this and so I don't think he's made reasonable attempts to mitigate his loss.

I also haven't seen anything that shows S was made aware of any special loss Mr R might suffer before his purchase. There are no pre-contractual conversations I'm aware of discussing time being of the essence or Mr R only being able to take delivery via a service point. So I don't think S ought to have viewed Mr R's circumstances as being especially different from a regular customer. It follows I don't think S had any special knowledge that ought to put them on notice Mr R would have to take a day off work following any delay.

Mr R also says the delays caused him inconvenience and a general loss of his time. Even if that were the case, inconvenience and extra time spent caused by a breach of contract are non-financial losses that courts are unlikely to award compensation for. And as section 75 here is concerned with AESEL's liability for a misrepresentation or breach of contract by S, what a court would award is the key consideration here. In the circumstances, it's unlikely a claim for non-financial loss resulting from a breach of contract by S would be successful in court – and by extension AESEL is not liable for the losses under section 75.

There are certain types of contract, such as those that specifically provide for a relaxing or enjoyable experience, that might give rise to a successful claim for certain non-financial loss following a breach of contract. But in a simple contract for goods, such as Mr R's supply of goods contract, a court is unlikely to say these types of loss are claimable. So I don't think he can hold AESEL liable for any distress, inconvenience or time spent putting things right because of a breach of contract.

In summary, I think AESEL's decision to not pursue a chargeback claim was fair, as his dispute doesn't fit into any of the chargeback dispute categories. And I don't think AESEL acted unfairly when declining Mr R's section 75 claim, as I don't think there's been a breach of contract or misrepresentation, or any loss that Mr R can reasonably claim for.

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 asked the parties for their responses, but I haven't received any by the deadline I set.

I've been given no reason to depart from the findings and conclusions I made in my provisional decision. It follows that I won't be upholding Mr R's complaint, for the same reasons set out in my provisional decision.

My final decision

My final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr R to accept or

reject my decision before 25 March 2025.

Alex Watts
Ombudsman