

## The complaint

Mr W has complained about the way American Express Services Europe Limited (“AESEL”) dealt with his request for money back.

## What happened

In September 2023 Mr W paid around £1,500 using his AESEL credit card for dental treatment from a supplier I’ll call “S”. Mr W received sets of dental aligners from S and he was due to use them over the next few months.

Mr W received a message from S around October 2023 and he contacted AESEL because he was concerned S wouldn’t continue the service. AESEL wanted confirmation from Mr W that he was due a refund. In December 2023 S went out of business when Mr W was part way through treatment, so he contacted AESEL to ask for a refund. AESEL said the information Mr W submitted wasn’t sufficient for it to say a refund was due.

Mr W decided to pursue the claim but AESEL said it didn’t think the necessary conditions were met for a valid claim to be considered under section 75 of the Consumer Credit Act 1974 (“s.75”). Mr W decided to refer the matter to the Financial Ombudsman. He said he received 20 aligners to be worn at two-week intervals. He said after the fourth set of aligners they stopped fitting, but he couldn’t get any help because S was no longer trading.

One of our investigators looked into things and ultimately concluded the necessary relationship for a s.75 claim to be considered did exist. But he thought AESEL’s answer was broadly fair.

Mr W didn’t agree. He said S misled him in 2023 that it would be able to honour the contract. He said the service came with a lifetime guarantee and the price of it was included in the contract.

As things weren’t resolved, the complaint was passed to me to decide.

I asked if Mr W could show us the evidence of the unopened aligners, but he said he didn’t keep them. We asked if he had any evidence of contact with S about the fitting issues, but he said it stopped providing support in October 2023. He also said he’d need to start treatment again elsewhere.

I issued a provisional decision that said:

*I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr W and AESEL that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.*

*What I need to consider is whether AESEL – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr W's request for getting money back. It's important to note AESEL isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, AESEL can consider assessing a claim under s.75 or raising a chargeback.*

*S.75 is a statutory protection that enables Mr W to make a like claim against AESEL for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with him for the provision of goods or services. But there are certain conditions that need to be met for s.75 to apply. The value of the transaction falls within the financial limits. And I think the necessary relationships exist between the parties.*

#### Implied terms

*In cases such as this it is often complex to assess the quality of the service Mr W paid for. Results from such treatments are subject to many variables. Mr W has not provided supporting evidence such as an independent, expert opinion that sets out the treatment he paid for has not been done with reasonable care and skill as implied by the Consumer Rights Act 2015 ('CRA'). I'm mindful it is the manner in which the service was provided rather than the results of the treatment that is the crucial issue for me in considering whether there's been a breach of an implied term in relation to the service.*

*I'm not a dental expert, and neither is AESEL. Without sufficient supporting evidence, I don't think AESEL was unfair to not uphold the claim on the basis of a breach of an implied term of the contract because I've not seen enough to determine the service S offered wasn't carried out with reasonable skill and care, or that the aligners weren't of satisfactory quality.*

#### Express terms and guarantee

*I also need to consider what I think Mr W's contract with S agreed to provide in terms of treatment so I can determine whether there has been a breach of an express term of it. I don't have a contract signed by Mr W as I understand they were kept in an online application that's no longer available. There's a lack of evidence, which makes it very difficult to assess. But it's not in dispute Mr W was due to receive a set of aligners when he entered into the contract in September 2023 and that he received and used at least some of them. I think the core contract was for those set of aligners that he was due to use for a few months.*

*In the absence of a specific signed contract, I've looked at S's website from around the time Mr W entered into the contract. This says most treatment lasts between 4 to 6 months. S says if the customer hasn't achieved the results they want, and providing they've met certain conditions, the customer might be eligible for additional 'touch up' aligners. Moreover, I understand S should have been there to support the customer if there were issues during treatment.*

*Mr W said he stopped using the aligners after the fourth set because of fitting issues. He wasn't explicit in saying that when he first raised his claim with AESEL. And he's not been able to supply evidence of unopened aligners. So AESEL had no way of knowing if that was right. And as I said above, there's no supporting evidence showing a problem with the aligners. I'm also conscious Mr W said he received no support from S from October 2023. But we've seen several other cases where S was still trading and responding to customers up to the day before it went out of business in mid-December 2023. Based on Mr W's timeline, I think there's a good chance he may have been able to get support at around the time he was due to finish using the fourth set of aligners before S went out of business in December 2023.*

*While I don't agree with the reasons AESEL gave for not upholding the s.75 claim, even putting that to one side I'm not persuaded it had sufficient information to have upheld Mr W's claim and offered him a full refund.*

*However, I'm aware S provided a lifetime guarantee of sorts, which could have supported Mr W either during treatment or after the core treatment. But there were several conditions Mr W needed to meet in order for him to have benefitted from the guarantee.*

*S's website says if the customer hasn't achieved the results they want, and providing they've met certain conditions, they might be eligible for additional 'touch up' aligners. Further aligners seem to be part of S's aftercare offering for further refinement (subject to dentist approval). On S's website from the time, the frequently asked questions ("FAQ") page has a section for further treatment under the guarantee. This suggests customers can request further aligner 'touch ups' after the core treatment at no cost on an ongoing once a year basis. And it could have supported Mr W if he had problems part-way through treatment.*

*From what I can see the availability of a 'touch up' isn't the same as saying that particular results will be achieved, but the guarantee offered the possibility of having further aligners provided that during treatment Mr W took certain steps. And that, after treatment, Mr W bought retainers every 6 months and wore them as prescribed. A dentist also had to approve the treatment. My understanding is that a dentist would only do so if they assessed that further progress to straighten the teeth would be possible. I'm conscious AESEL didn't have evidence Mr W met the conditions for the guarantee. Although reasons for not being able to provide that evidence are understandable given S went out of business, and its online application stopped working.*

*Mr W thinks he should be provided with a full refund of the treatment costs. Even accepting services can't be supplied under the guarantee, given the stage of treatment he was at, the guarantee would never have given him the option of a refund of the core treatment costs. From what I've seen, a full refund was only available for the first 30 days after Mr W began the treatment around September 2023, and only if Mr W had not opened or used the aligners. I don't think it would be fair or reasonable for me to tell AESEL that it should now provide Mr W with a full refund to compensate him for a potential loss through breach of contract based on the very limited evidence available.*

*Even if I were to accept there's a potential loss, it wouldn't be straight-forward to establish the value of the perceived loss. And, as I said, I'm required to resolve the complaint quickly and with minimum formality. But I'm conscious Mr W may have been able to utilise the guarantee if he had issues with ill fitting aligners, or if he wanted further refinement after the core treatment. And it's not in dispute that S went out of business during the time Mr W should have been completing his treatment.*

*We've seen other cases where the finance company shared information from S saying the financial value of a 'touch-up' treatment is £220. It's difficult to know for certain if that's accurate. But this represents a refund of over 10% of the cost of the treatment. Considering we'll never know if Mr W would have continued to receive any benefits under the guarantee; taking into account there's a lack of evidence he hadn't received the core treatment, I think AESEL should offer this price reduction to remedy any potential loss. It's not perfect, but it seems like a fair compromise given I think the total amount paid was substantially for the core treatment. Mr W didn't supply sufficient evidence that the service he lost out on was worth more than that.*

### Chargeback

*The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back. While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim. American Express was the card scheme in this case.*

*Given I've found AESEL should refund Mr W £220 for the loss of the lifetime guarantee I don't think I need to consider how it handled the chargeback further because I don't think there was sufficient supporting evidence supplied to show that would have led to a better outcome.*

I can't see AESEL had anything further to add. Mr W said he didn't think there was adequate consideration of the loss of support during the remaining period from December to June 2024, when he finished the treatment.

### **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'd like to thank the parties for their responses. I appreciate Mr W is saying compensation should be increased due to the lack of support after S went out of business. But, for the reasons given above, I think there was a lack of supporting evidence to have enabled AESEL to fully consider the claim. And the information supplied on whether Mr W finished or stopped the treatment was inconclusive.

I'm conscious the treatment was largely self-directed. Customers were able to continue treatment without the support from S if they chose to do so. I'm also mindful AESEL wasn't given supporting evidence to be able to demonstrate the value of what Mr W said he lost out (other than for the guarantee as I explained in my provisional decision).

Overall, I've tried to find a fair compromise in the particular circumstances of the complaint. Seeing as though I've not been provided anything materially new to consider, I'm not going to depart from the conclusions I reached in my provisional decision.

### **My final decision**

My final decision is that I uphold this complaint and direct American Express Services Europe Limited to pay Mr W £220.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr W to accept or reject my decision before 21 April 2025.

Simon Wingfield  
**Ombudsman**