

The complaint

Mr P complains that American Express Services Europe Limited (“AESEL”) failed to properly pursue his claim for a refund from the merchant.

What happened

Mr P ordered goods online from an overseas retailer (“the Merchant”) costing £139.10 including shipping insurance. Shortly after they were delivered, Mr P tried to assemble the time and discovered it was damaged. He contacted the merchant and it asked him to return the item to allow it to make a refund. He explained that this would cost more than the goods had cost him and he said this was unreasonable. The merchant offered him a discount if he kept the goods, but Mr P rejected this.

He contacted AESEL and it made a chargeback. This was challenged by the merchant which said its terms and conditions required the goods to be returned before a refund would be made.

Mr P brought a complaint to this service where it was considered by one of our investigators who didn’t recommend it be upheld. She said that the merchant had defended the chargeback providing evidence of the terms and conditions and there was no reasonable basis for AESEL pursuing it further.

She also considered if there were grounds for a successful claim under section 75 Consumer Credit Act 1974 (“s.75”). She thought that there wasn’t sufficient evidence to show there had been a breach of contract.

Mr P didn’t agree and said the pre-sale terms and conditions didn’t cover those considered by our investigator. He said it was impossible to comply with a request to be satisfied the goods were acceptable on delivery as this would require the delivery driver to wait an unreasonably long time. He also thought the shipping insurer should cover the cost.

I issued a provisional decision as follows:

“I’ve considered all the available evidence and arguments to decide what’s fair and reasonable in the circumstances of this complaint.

I’ve read and considered the whole file, but I’ll concentrate my comments on what I think is relevant. If I don’t comment on any specific point raised by Mr P or AESEL, it’s not because I’ve failed to take it on board, but because I don’t think I need to comment on it in order to reach what I think is the right outcome.

Chargeback

The complaint is about AESEL’s handling of the chargeback and not the actions or behaviour of the merchant. Quite simply did it deal with Mr P’s request fairly and reasonably.

As our investigator noted, chargebacks are subject to the rules set out by the relevant card scheme whose logo appears on the card. The card schemes are not within the jurisdiction of

the Financial Ombudsman Service and we are unable to require them to run their chargeback schemes in a particular way. However, we can consider whether a card issuer has applied the rules correctly and conducted the chargeback process in a competent manner.

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.

AESEL accepted there was a possibility of a successful chargeback being made and so it took the evidence Mr P provided and made one. The merchant didn't agree and pushed back. It set out why it believe it had complied with its terms and conditions. AESEL does not have the power to ignore the push back. It could, in effect, take an appeal to the card scheme. Such appeals are relatively rare and AESEL would usually expect additional supporting evidence before taking such action. Having seen the merchant's response I cannot say AESEL was wrong not to have pursued the matter further even though I am not persuaded by the merchant's arguments.

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 P, because he paid for the item 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.

I appreciate AESEL did not consider s.75, but I believe it should have done so. The transaction falls within the requirements of s.75 and it is an alternative means of Mr P obtaining redress. I don't consider there is any suggestion of misrepresentation, but I think there has been a breach of contract.

The merchant's website sets out the relevant terms and conditions as follows:

"Damaged or faulty items on arrival

Defective or damaged items can be easily returned, please contact us within 14 days of delivery and follow the 14 day product guarantee procedure. The party responsible for the damage will have to pay for the return postage. The return package should include all accessories for that product.

If the item is of high value, we may ask you to return it. Please include all accessories such as cables, chargers and batteries in the return package. If an accessory or component is

missing, we will ask you to pay for it.”

The sections on the merchant’s 14 day guarantee reads as follows:

“Guarantee

14 day Damaged or faulty on arrival product guarantee

If one or more of the items you receive is damaged, faulty or does not work, this guarantee will protect you.

What we need from you

- 1. The order number and item number;*
- 2. A photo or video showing the problem;*
- 3. A photo of the shipping label and original packaging;*

We will review your claim and contact you if we need more information; If approved, we will arrange a replacement part or a partial refund for the defective product. We will pay for the defective part through a replacement part or a partial refund of the defective product. If you are very dissatisfied with this product, please do not hesitate to contact us, our customer service team will provide you with a complete solution.”

Mr P sent the photos and the relevant details of the purchase to the merchant within a few days of delivery. I am satisfied the item was damaged and it is clear to me that this was not damage caused by Mr P. I am also satisfied that the damage was such that it could not be easily remedied by the supply of replacement parts. In any event the merchant had the opportunity to explore that route and chose not to do so. Furthermore, it would appear that the merchant accepted the item was damaged since it offered several discounts eventually reaching 20%.

The terms say that the party responsible for the damage should pay the return postage costs. As I have pointed out the evidence submitted by Mr P makes it reasonably clear that he didn’t cause the damage and so it must either have been caused by the merchant or the shipping company. I do not see that the merchant was entitled to require him to pay the costs of returning the item, especially as those costs would most likely have exceeded the cost of the item.

Mr P was supplied with a defective and damaged item and under the terms and conditions I do not see that the merchant had the right to require him to return it at his cost and so I believe there has been a breach of contract

My provisional decision is that I believe this complaint should be upheld and Mr P reimbursed the sum of £139.10.”

Mr P accepted the provisional decision and AESEL acknowledged receipt of it, but provided no further response within the deadline.

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.

Given Mr P’s acceptance and AESEL not providing a substantive response I have been

given no grounds which would cause me to amend my provisional decision. As such it stands, as set out above.

Putting things right

AESEL should pay Mr P £139.10.

My final decision

My final decision is that I uphold this complaint and I direct AMERICAN EXPRESS SERVICES EUROPE LIMITED trading as American Express to compensate Mr P as set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 20 June 2025.

Ivor Graham
Ombudsman