

The complaint

Mrs H is unhappy with the way American Express Services Europe Limited (AESEL) responded to a dispute for goods she purchased using her American Express credit card.

What happened

Mrs H bought a pair of boots from an online retailer I'll call O in June 2024 for £255. She contacted O to complain that part of one boot – the toggle- was faulty and provided pictures to show it had come away from the boot. O said that she reported the issues outside of the 28 day return period, and having looked at the pictures it said it thought the damage was caused by general wear and tear. It didn't offer any further assistance.

Mrs H was unhappy with O's response, so she raised a dispute with AESEL to help her get her money back. She said the goods were damaged or defective. AESEL said that Mrs H raised her dispute outside the time limits allowed for a chargeback claim so it closed the claim. Mrs H provided additional information however AESEL didn't progress the chargeback any further.

Mrs H was unhappy with the way AESEL dealt with the dispute, so she raised a complaint. AESEL responded in December 2024 to say it wasn't changing its position and suggested Mrs H contact O again.

As Mrs H remained unhappy, she raised a complaint with the Financial Ombudsman. An Investigator reviewed the complaint. As part of her investigation, she asked AESEL whether or not a claim under Section 75 of the Consumer Credit Act 1974 (Section 75) was considered. AESEL said it didn't do this and gave Mrs H the opportunity to contact it in its final response letter if she had any further queries.

The Investigator didn't uphold the complaint. She said it was unclear whether or not Mrs H raised a chargeback claim within 120 days under the rule, but she thought that if a claim was raised it's likely O would have defended it, as it didn't agree to refund Mrs H because it didn't think the boot was faulty. She also considered if a Section 75 claim would have been successful and explained she didn't think there was sufficient evidence to demonstrate there was a breach of contract or misrepresentation.

Mrs H disagreed and reiterated that she thought the boots were defective as the toggle fell off after minimal use.

As the matter remained unresolved it's been passed to me for a decision.

I issued my provisional decision on this complaint on 18 June 2025, in which I said the following and which now forms part of my final decision:

Where evidence is incomplete, inconsistent or contradictory, I reach my decision on the balance of probabilities – in other words, what I consider most likely to have happened in light of the available evidence and wider circumstances.

As Mrs H bought the boots on her credit card, there are two options through which AESEL may have been able, or obligated to provide a refund, a chargeback claim or a Section 75 claim.

Chargeback

In certain circumstances a card issuer can raise a chargeback dispute under the relevant card scheme rules, in this case it's the American Express scheme. This is where the card member has a dispute with the merchant, but this is subject to strict rules and there is no guarantee that the card issuer will be able to recover the disputed amount. Whilst there is no obligation for the card issuer to raise a chargeback claim, I think it's good practice to do so, where there is prospect of success.

From the notes provided by AESEL it's not totally clear whether or not a chargeback could have been raised within the time limits. AESEL said the chargeback was raised out of the timeframes under the scheme rules. It appears Mrs H informed it that she received the boots on 18 June 2024, when she first raised the dispute. Some of the dispute notes AESEL provided show a date of 4 October 2024.

The rules AESEL provided says that a chargeback can be raised about receiving damaged or defective goods based on either of the following: "120 days from the Network Processing Date" or "120 days from the receipt date for goods and services". So, if Mrs H had raised a dispute on 4 October 2024, I think it's likely a chargeback claim could have been raised. However, without knowing the exact date Mrs H raised the chargeback I can't safely conclude she raised a chargeback within the correct timeframes.

I've also considered whilst there may have been a possibility for AESEL to have raised a chargeback based on the time limits; part of the rule say Mrs H needed to show that the boots were returned or attempted to be returned to O, but it appears she asked for a refund. Based on this, I think it's unlikely there was reasonable prospect of success through chargeback. So, I don't think AESEL acted unfairly by not raising a chargeback. In any event, because of my findings below, I haven't considered this further as I think Mrs H is likely to have a successful claim under Section 75.

Section 75

AESEL didn't consider a Section 75 claim. It said that it wouldn't proactively consider a claim under Section 75 and gave Mrs H an opportunity in its final response letter to respond back with any further questions and comments, but she didn't do so. However, I think when Mrs H raised a dispute, AESEL had the opportunity to consider how it could deal with the dispute. It's not unusual for a financial services provider to consider a chargeback claim first. However, as Mrs H responded back to AESEL to explain she was unhappy with O's position, after AESEL told her the chargeback claim was raised out of the timeframes allowed, I think it should have considered a claim under Section 75 as a way of helping Mrs H explore all of the options available to her, but it didn't. So, I've thought about whether Mrs H has lost out because of this.

Under Section 75, AESEL is jointly liable for any breaches of contract or misrepresentations made by the supplier of goods or services – which is O in this case. In order for there to be a valid claim under Section 75, there needed to be a debtor-creditor-supplier ('DCS') agreement in place and the financial limits have been met for a valid claim. I'm satisfied the criteria has been met.

Misrepresentation

I have nothing to suggest that the boots were misrepresented to Mrs H when she bought them, so I've focused on whether Mrs H provided enough evidence to show there had been a breach of contract.

Breach of contract

I've noted the invoice for the boots appears to have O's Italian address. However, as the website seems to have a UK address and O sold the boots to Mrs H who resides in the UK, I think the Consumer Rights Act 2015 (CRA) is also relevant to this complaint. The CRA implies terms into the contract that goods supplied will be of satisfactory quality. This means the quality a reasonable person would consider satisfactory, taking into account the description of the goods, the price and any other relevant circumstances. Importantly, aspects of quality under the CRA includes their general state and condition as well as things like fitness for purpose, appearance and finish, safety and durability.

The CRA also sets out what remedies are available to consumers if statutory rights under a goods contract are not met.

The CRA sets out that goods which do not conform to the contract at any time within the period of six months, beginning with the day on which the goods were delivered to the consumer must be taken not to have conformed to it on that day. Unless it's established the goods did conform to the contract on that day or that the application is incompatible with the nature of the goods or with how they fail to conform to the contract.

Although the email response from O to Mrs H is undated, it seems Mrs H contacted O within six months from the date she purchased the boots. I say this because she raised a dispute with AESEL around October 2024 and at the very least in November 2024. I've noted from O's response to Mrs H, it didn't think there was a fault with the toggle and says it was as a result of wear and tear. However, I've also noted that it didn't provide any supporting evidence to support its conclusion other than to rely on the pictures of the boots which Mrs H supplied.

I can see there is a problem with the boot and that's not in dispute. However, there's no conclusive evidence such as an independent report that the toggle came off due to an inherent fault. While I'm not an expert on boots and the components, I've thought carefully about what might have caused the toggle to come off. Mrs H said she hadn't worn the boots very often, which makes it less likely that the problem was due to prolonged use or accidental damage. I'm conscious that these were an expensive pair of boots. The toggle is there to be used to help the wearer put on the boots. It seems more likely than not that the toggle failed or came away as part of its normal use. But I don't think that should have happened on an expensive pair of boots after only a few months' worth of use.

Given that the fault appeared relatively soon after purchase, and taking into account the nature of the issue, and the price paid, I think it's more likely than not that the toggle came off during ordinary use. In my view, that suggests the boots weren't of satisfactory quality at the time Mrs H bought them. Although they were purchased at a discounted price, they were still new, and I would expect them to meet a reasonable standard in line with that. Given this happened so soon after purchase I think it was up to O or AESEL to demonstrate the fault wasn't an inherent issue. Without evidence to show this, on balance I'm more persuaded with Mrs H's testimony and evidence, and I find that there was likely a breach of contract.

I've thought about the remedies available under the CRA where a breach of contract occurred. I've not considered the short term right to reject as Ms H didn't raise the fault with the boot in time. So, I've thought about the right to repair or replacement. In my view, the boots didn't meet the implied standard of satisfactory quality, which means Mrs H could fairly

seek to have them repaired.

The CRA sets out that if the consumer requires the trader to repair or replace the goods, the trader must do so within a reasonable time and without significant inconvenience to the consumer. And the trader must bear any necessary costs incurred in doing so (including in particular the cost of any labour, materials or postage). However, I'm mindful that AESEL is a financial services provider and not a retailer, so it wouldn't be expected to carry out the repair itself. I can see from looking online there are options to repair the boots in many shoe repair services including the manufacturer of the boots. I think the fairest way of remedying the breach here is simply for AESEL to cover the cost of repair.

I asked Mrs H and AESEL to send me any further comments or evidence for me to consider.

AESEL replied to say it accepted the provisional decision. Mrs H didn't respond.

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.

As neither party has sent me anything further to consider, I see no reason to depart from my provisional decision. So, for the reasons given in my provisional decision, I uphold this complaint.

Putting things right

I'm persuaded AESEL should have considered a claim under Section 75 when Mrs H said she was unhappy with its response to a chargeback claim. On balance, I think a breach of contract occurred and I direct AESEL to cover the cost of repair (and postage if required). To do this Mrs H should provide AESEL up to three quotes from a VAT registered tradesperson or company for repair of the toggle.

Mrs H should do this within six weeks of accepting this final decision, if she intends to accept.

If Mrs H chooses to pay for the repair, AESEL should reimburse her this cost on receiving of a valid receipt from her chosen company.

My final decision

I uphold this complaint and direct American Express Services Europe Limited to pay or reimburse for the repair of Mrs H's boot she bought using her credit card. I make no further award.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs H to accept or reject my decision before 1 August 2025.

Amina Rashid
Ombudsman