

The complaint

Mr A has complained about American Express Service Europe Limited (AESEL)'s handling of his refund claim.

Mr A has complained together with Miss A, an additional card holder on his AESEL credit card account, and the person who made the disputed purchase. Because the credit card account is in Mr A's name, he is the eligible complainant for the purposes of our rules. However, I will refer primarily to Miss A in this decision as she has been the main point of contact with this service.

What happened

Miss A purchased a bag from a retailer I shall call 'M' in July 2024 using a supplementary AESEL credit card tied to Mr A's account. This payment was to the sum of £1,430.

The package was delivered to Miss A the next day, however she says when she opened it the handbag was missing.

She contacted M the following day to let them know this had occurred. Miss A says that despite several communications on this issue they couldn't assist and so they directed Miss A to raise a chargeback with AESEL.

Miss A then contacted AESEL to raise a chargeback claim against M and a Consumer Credit Act 1974 ("CCA") section 75 claim ("S75") against AESEL.

AESEL raised a chargeback but this was subsequently declined after M objected. M said they felt the parcel had been delivered correctly with the handbag inside and so they didn't consider there had been any issues with delivery. AESEL also concluded there wouldn't be a valid S75 claim as they felt the technical requirements hadn't been met. A final response letter was subsequently issued stating they didn't consider they'd done anything wrong in their handling of the claims and so didn't need to do anything more.

As Miss A didn't agree, she referred the complaint to our service. Our investigator considered the complaint but reached the same conclusions as AESEL.

As Miss A remained dissatisfied, she asked for an ombudsman to issue a final decision on the matter.

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've read and considered the evidence submitted by the parties but won't comment on it all – only the matters I consider to be central to this complaint. This isn't intended as a discourtesy but reflects my role in resolving disputes informally.

It's important to note that AESEL aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Miss A paid for this transaction using an AESEL credit card, both chargeback and a S75 claim could possibly help her. So in deciding what is fair and reasonable I've focussed on this.

Chargeback

Chargeback is the process by which settlement disputes are resolved between card issuers and merchants. A consumer isn't entitled to chargeback by right. But where there are grounds to raise one and it has reasonable grounds for success, it is good practice for one to be raised by the card issuer.

However, a chargeback isn't guaranteed to succeed and is governed by the limitations of the particular card scheme rules (in this case AESEL's own rules). I've considered the relevant chargeback rules in deciding whether AESEL acted fairly.

The relevant chargeback code here would be 'Goods / Services Not Received or Only Partially Received'. I've therefore considered the evidence available with regard to this chargeback rule and whether AESEL acted fairly when they declined Miss A's claim following the merchant's objection.

In this case M disputed the chargeback and noted the following evidence which they considered was sufficient to show the delivery was made correctly:

- M said the item was dispatched in line with its usual process and so shipped to the address provided by Miss A.
- Courier tracking confirmed delivery on 23 July 2024.
- The delivery required a confirmation of a QR scan which was sent directly to Miss A.
- There was also a confirmation of the weight of item on delivery at 1.183 kg.
- M provided photographs of the package being delivered to the correct location. These show it to be sealed and there is no evidence of it being tampered such as the wrapping ribbon being broken.
- They also said the item was packed in an over-bag – this is usually an outer bag that makes any tampering evident and is often used by luxury retailers to secure goods during shipping.

AESEL considered M's submissions and felt this was sufficient to determine there wasn't a reasonable prospect of success if it was progressed further. They therefore declined the claim.

Did AESEL act reasonably in declining the chargeback claim?

It is important from the outset to say that when it comes to complaints about missing goods, especially when the packaging appears intact and untampered, it is difficult to assess what is likely to have occurred.

In this case the parcel was delivered to Miss A's address, was signed for using the QR scan sent to Miss A and I note that the weight of the parcel is plausible with consideration of the combined weight of the handbag purchased and the additional packaging.

The package was also shipped in an over-bag and its use is to ensure further protection against any tampering due to the high value of items within.

Miss A's photos are from after the package was accepted and from when it was opened showing there was nothing within.

In this case however there is insufficient evidence to show the package was tampered with. That is to say there is insufficient strong and objective evidence to support such a position. That would be, for example, visible damage showing the parcel could've been removed prior to delivery etc, which isn't the case here.

I also note Miss A didn't raise any concerns of the package feeling light upon delivery. But this means we are left with limited evidence to counter the evidence showing the package was delivered appropriately.

As an additional point I've also not seen evidence that she reported this loss or theft to the police. That's not something she is required to do under these card issuer rules but considering this was an expensive item missing from a sealed delivery, I think it'd be reasonable to expect this. This meant AESEL didn't have any further confirmation of the loss from other third parties beyond Miss A's submissions which further adds weight to M's position.

AESEL thus concluded that M had satisfied the requirements of their scheme and so declined the chargeback. Based on the evidence available, I consider AESEL's decision to be fair, and I agree there wasn't a reasonable prospect of success had AESEL chosen to progress the claim further to arbitration.

S75

It's important to note that AESEL aren't the provider of the goods here – so in deciding what is fair and reasonable, I'm looking at their particular role as a provider of financial services. In doing so I note that because Miss A paid for this transaction using a credit card, a S75 claim could possibly help her. So in deciding what is fair and reasonable I've focussed on this.

S75 provides that in certain circumstances the borrower under a credit agreement has an equal right to claim against the credit provider if there is either a breach of contract or misrepresentation by the supplier of goods and services.

To assess a valid claim, AESEL would've needed to consider all relevant evidence for the alleged breach of contract or misrepresentation. But for there to be a valid claim under S75 there are certain technical requirements and a part of that is there needs to be a valid debtor-creditor-supplier agreement in place. This means there needs to be a valid agreement between the 'debtor' who took out the finance and the supplier of goods or services in dispute. The key considerations are the following:

- In this case the credit card account is in Mr A's name – he would therefore be the debtor as defined under the CCA.
- Miss A used a supplementary card and while this would've been issued in her name this wouldn't mean she's the debtor. This is because supplementary cards don't form separate regulated agreements.

- The evidence shows that Miss A placed the order and paid for the goods using the supplementary card. I see that the delivery address notes her as the recipient and in turn the goods were delivered to her directly.
- I therefore have insufficient evidence Mr A contracted for the goods, received the goods or benefitted in any way from the transaction.

This would mean that the DCS requirements haven't been met as the debtor Mr A was not the party contracting for the goods and the transaction was made for the benefit of another party – in this case Miss A. I must also add that Miss A said this was intended as a gift for someone. This wouldn't change matters here as the key aspects would be determining who entered into the contract with M and who was liable under the credit card agreement with AESEL with mind to DCS.

AESEL identified the necessary requirements weren't in place and determined there wasn't a valid S75 claim here under the circumstances. I do agree and can't say AESEL did anything wrong in declining the S75 claim.

In conclusion

I know this was an expensive purchase and appreciate how distressing this situation has been for Miss A. However as stated my role is to determine if AESEL acted fairly when considering Miss A's claims.

I do consider their assessment of the chargeback claim fair here as I don't think there was a reasonable prospect of success with consideration of the available evidence. Likewise they also correctly concluded that the S75 technical requirements hadn't been met.

I therefore won't be asking AESEL to do anything more here. As an additional point I note that Miss A has referenced the fact that an insurance claim was also declined here regarding her missing item and a final response letter was issued. If she remained dissatisfied with that outcome, she may be able to bring that complaint separately to this service to consider.

My final decision

For the reasons stated above, I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 4 August 2025.

Viral Patel
Ombudsman