

The complaint

Miss S complains that AMERICAN EXPRESS SERVICES EUROPE LIMITED (AESEL) didn't reimburse her after she reported falling victim to a scam. She wants her losses refunded along with 8% statutory interest.

Miss S is represented by a third party but for ease of reference I have referred to Miss S throughout this complaint.

What happened

Miss S made eight payments using her AESEL credit card between November 2021 and February 2022 totalling £57,582. These payments were for art.

Miss S said that she had been looking for investment opportunities and heard about the art investment through an online advertisement. She was contacted by the art company, and she made an initial purchase of £6,000. Miss S said she was told she would be able to sell this in around a year's time for a return of at least 20%. Before investing she said she researched the company and drove past its gallery in London.

Miss S said that the salesman then contacted her on several occasions, and she made a purchase of a non-fungible token (NFT) for a piece of art in November 2021 for £60,000. She said she was told this purchase could be sold at auction in a couple of months and she would triple her money or that she could ask to sell the investment at any time as the market was liquid. Miss S said that just before the auction was due, she bought another NFT for £60,000. The auction didn't happen, and she asked for a full refund of the money she had invested. This wasn't given and instead she was offered to change her NFTs for artwork prints. She was told she would make 20% profit on the sale of the prints and that there was a buyer waiting. The sale didn't happen, and Miss S was asked to invest more but she didn't do this. Miss S said that she was then trapped with the prints which had little value.

Miss S said she has been the victim of a scam and should be refunded her losses. She said that for the payments she made using her AESEL credit card she had a Section 75 claim as the goods were misrepresented and there had been a breach of contract. She also said that she should be refunded through the Contingent Reimbursement Model (CRM) as she had been the victim of a sophisticated scam.

AESEL said that Miss S made the following payments to the company she has said was trading fraudulently.

Payment	Date	Payment
	01/06/2021	£50
	11/06/2021	£4,200

	30/06/2021	£2,160
1	22/11/2021	£5,590
2	23/11/2021	£3,000
3	23/11/2021	£7,000
4	30/12/2021	£10,752
5	17/02/2022	£1,440
6	21/02/2022	£10,000
7	21/02/2022	£10,000
8	23/02/2022	£10,000

**The first three payments weren't included as part of this complaint.*

AESEL noted that only eight payments were included in Miss S's claim and as she had payments dating back to June 2021, the merchant would have been deemed a trusted merchant meaning the subsequent payments would be approved.

AESEL explained that Miss S's claim was raised too late to be considered under the chargeback rules. It considered Miss S's claim under Section 75 of the Consumer Credit Act but said that the cost of the NFTs purchased exceeded £30,000 and therefore fell outside of the Section 75 limits. It noted that the subsequent purchases of artwork were financed from proceeds of the NFTs and so AESEL wasn't a party to these transactions.

Miss S referred her complaint to this service.

Our investigator didn't think that AESEL was required to intervene in payments one to three, noting the size of these payments and the payments Miss S had made to the same merchant in June 2021. However, they thought that AESEL should have intervened at payment four, noting the size of this payment and that it exceeded Miss S's credit limit.

Our investigator considered what the likely effect of an intervention would have been, but they didn't think this would have stopped Miss S making this and subsequent investments. This was because at the time of the investments, the company Miss S was buying from appeared to be a legitimate art business, was registered at Companies House and had a physical art gallery in London which Miss S had driven past. Therefore, our investigator didn't think that had AESEL questioned Miss S about her payments it would have identified a scam. Our investigator also explained that the payments weren't covered by the CRM.

Our investigator noted when the claim was raised and found a chargeback wasn't an option. In regard to Section 75, our investigator didn't think that AESEL was wrong not to uphold this claim.

Miss S didn't accept our investigator's view. She said that the artwork she purchased was marketed at a value much higher than the actual value meaning it was misrepresented, and a breach of contract had occurred. She noted the information issued by the liquidators of the company she had bought from which she said confirmed the scam. Miss S said she should be refunded under Section 75.

Our investigator responded to Miss S's comments. They noted that the terms and conditions provided by the company Miss S bought from referred to there being no guarantee about the value of the product. They explained that when Miss S purchased the artworks, AESEL were not part of the agreement.

Regarding the information from the liquidators, our investigator said that the liquidator had challenged the art as being worthless, which didn't necessarily mean that the art was worthless but that an allegation of this had been made and this would need to be discussed in a formal trial. Our investigator didn't think this was enough at this stage to be able to say a scam had taken place. They also noted that the artwork appeared to have been provided as this was being stored for Miss S.

As a resolution hasn't been agreed, this complaint has been passed to me, an ombudsman, to issue a decision.

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.

Miss S has referred to other similar cases where payments have been refunded. While I note the comments, I would like to explain that every case is assessed based on its unique circumstances. While I take all relevant rules, regulations and guidance into account, my decision is based on what I consider fair and reasonable given the evidence I have seen, and the wider circumstances at the time.

In broad terms, the starting position at law is that a business is expected to process payments that a customer authorises it to make, in accordance with the Payment Services Regulations and the terms and conditions of the customer's account.

There are, however, some situations where we believe that businesses, taking into account relevant rules, codes and best practice standards, shouldn't have taken their customer's authorisation instruction at 'face value' – or should have looked at the wider circumstances surrounding the transaction before making the payment.

Where the consumer made the payment as a consequence of the actions of a fraudster, it may sometimes be fair and reasonable for the business to reimburse the consumer even though they authorised the payment.

Miss S mentioned the CRM in her complaint and said that she should receive a refund through this. But, as our investigator explained, the payments being considered in this complaint were made using Miss S's credit card, and so they aren't covered by the CRM.

Before the disputed payments were made Miss S had made three payments to the merchant. These took place in June 2021 (around five months before the disputed payments) with one of the June payments being for £4,200. The June payments haven't been included in this complaint or Miss S's claim to AESEL. I note Miss S's comment about thinking all payments were included in her claim but also that these payments may not have been included as she had been able to sell the artworks.

This decision relates to the eight payments that Miss S raised her claim about. Given that Miss S had already made payments to the merchant and noting that it isn't unusual for customers to make high value transactions using their credit card, I do not think the size of the payments in November 2021, were such that AESEL was required to intervene. Based on Miss S's testimony, it appears the November payments were made to purchase a

£60,000 NFT.

Miss S made a further payment of £10,752 in December 2021. This payment was above Miss S's credit limit. So, while it was made to a merchant she had paid before, given the size of the payment and that this was above her limit which was unusual activity for Miss S, I think it would have been reasonable for AESEL to have intervened before releasing this payment, and given the size of the payment and the amount Miss S had paid to the merchant the month before, I think human intervention would have been reasonable at this point.

I have then considered what the likely outcome of any intervention would have been. While I cannot say for certain how Miss S would have responded to any intervention, I note that she had carried out research into the merchant she was paying. The merchant was registered on Companies House and had a physical art gallery that Miss S had said she had driven past on several occasions. Therefore, on balance, I think that even if Miss S had been called to discuss her payment she would more than likely have still wished to go ahead, believing she was participating in a legitimate investment opportunity.

Miss S has explained that she was contacted in February 2022 by the merchant about another £60,000 NFT. This was just before she was expecting to sell her first NFT at auction. Again, based on the information Miss S had at the time about the company that she was investing through, I do not think that further warnings at this time would have prevented her making the investment. As I do not think I can say intervention would have identified a scam, I have then considered the action taken once Miss S contacted AESEL about her claim.

Miss S has made several arguments about why she believes this is a scam. She has provided copies of legal documents in relation to the freezing of accounts connected to this alleged scam. She argues that the contents of these are persuasive evidence a scam has most likely occurred. I have looked through the information that has been provided and this service has issued other decisions which set out our conclusions about this issue. Miss S has said that she has evidence of the artwork she purchased being stored on her behalf. As she owns the artwork, the dispute is about how valuable it is and whether it was a good investment. In the judgment the judge stated that the dispute in relation to the price/value of the art and the secondary market were matters for trial and drew no conclusions. Regrettably, no trial took place because the issue was settled outside court. The settlement was made without admitting guilt or liability. The terms of the settlement are confidential. So, overall, I'm not persuaded that I have seen sufficiently strong evidence that this was a scam.

As Miss S made the payments using her credit card, the payments can be considered under Section 75. Section 75 says that in certain circumstances, the borrower under a credit agreement has an equal right to claim against the credit provider if there's either a breach of contract or misrepresentation by the supplier of goods or services. There are financial limits which must be met for a claim to be made. These are that the cash price of the goods or services as set by the supplier must be more than £100 but no more than £30,000. Based on the evidence provided, while Miss S was making payments using her AESEL credit card for amounts that fall within these limits, the payments were to acquire two NFT's each with an individual value of £60,000. This is outside the limit for a Section 75 claim, and I note that the subsequent transactions of art prints were funded by the NFTs and so AESEL wasn't a party to these transactions. Therefore, I do not find that AESEL acted incorrectly in its response to the Section 75 claim.

In summary, I do not think that intervention by AESEL would have changed Miss S's decision to make the payments and I do not find, based on the evidence available at this stage, I have enough to say that a scam took place. About recovery of the payments, CRM

isn't relevant in this case, and Miss S's claim didn't meet the financial limits for Section 75. Therefore, I do not find I can say that AESEL is required to do anything further in resolution of this complaint.

My final decision

My final decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Miss S to accept or reject my decision before 7 November 2025.

Jane Archer
Ombudsman