

The complaint

Mr T complains about how American Express Services Europe Limited (AESEL) handled a claim he made in respect of a transaction made with his credit card.

What happened

Mr T bought some goods from a retailer I'll refer to as "A". He says he returned the goods back to the retailer using A's return label. However, the return goods were lost in transit by the courier, and Mr T says the tracking evidence clearly shows this. Mr T says that he couldn't get a refund from A, and AESEL also refused to refund him. As a result, he says he's lost out on £2,999 which is the amount he paid for the goods.

AESEL said it raised a claim through the chargeback process; however, A defended the claim stating that a different item had been received to the one that was sent. AESEL requested evidence from Mr T which showed that the item sent was the one that was returned, but it didn't receive this from him. It also later considered Mr T's claim under Section 75 of the Consumer Credit Act 1974 (Section 75), and it said that A couldn't be held liable for the goods not having been received back, and so it didn't think it was liable to refund Mr T.

An Investigator considered the evidence provided by both parties, but they didn't uphold Mr T's complaint. They explained that they'd seen evidence provided by A which showed that the goods Mr T ordered, and it says were sent, were different to the goods it had received back. The Investigator also explained that AESEL had asked Mr T for more evidence, but he hadn't responded. So overall, the Investigator didn't think AESEL had handled Mr T's chargeback claim unfairly. The Investigator also didn't think AESEL needed to refund Mr T under Section 75, for broadly the same reasons as the chargeback.

Mr T didn't agree with the Investigator's view. He said that the correct goods were returned to A, and the loss occurred while in the courier's possession. He adds that the courier tracking evidence clearly shows that the goods were lost – and that this was shown on both the courier's and A's website. Mr T says that A have breached its contract with him by failing to refund him. He adds that the parcel in the evidence shown to him by the Investigator isn't a picture of the package he sent.

Because an agreement couldn't be reached, the complaint was passed to me to decide on the matter.

I previously issued a provisional decision on this case. That's because it was my intention to come to a different outcome to the Investigator. So, I wanted to give both parties the chance to respond with anything else they wanted me to consider, before I came to my final decision on the matter.

I have copied from provisional findings below, which also forms part of this final decision.

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

Having considered all of the evidence available to me I intend to uphold Mr T's complaint. I will explain my reasons for this below.

I'm sorry to have read of the issues Mr T has had with A. However, as AESEL aren't the supplier of the goods, I can only consider whether it acted fairly and reasonably in light of its role as the finance provider.

In deciding if AESEL has acted fairly and reasonably, I have thought about the ways it could have helped Mr T get a refund for the item he says he returned, but didn't receive a refund for. In this case, I consider the chargeback process and Section 75 of the Consumer Credit Act 1974 to be relevant.

Chargeback

The chargeback process provides a way for the card issuer – in this case AESEL – to help a customer claim a full or partial refund of the amount they paid on their card, if certain things go wrong with what they've purchased.

The process is overseen by the card scheme – in this case, Amex. Card schemes set out various rules covering things such as what sort of scenarios are eligible for chargeback, the kind of evidence required, and the timescales for a chargeback to be raised.

Generally speaking, it is good practice for a card issuer to attempt a chargeback where the right exists and there's some prospect of success. That said, they're not guaranteed to be successful, and a consumer is not able to demand that their card issuer attempt one. A chargeback can be defended too; the party which received the payment – in this case A – can resist a chargeback attempt. If neither party concedes then, ultimately, the card scheme itself can be asked to rule on the dispute in a process called arbitration.

AESEL raised Mr T's dispute under the chargeback scheme. The chargeback was raised under reason code 'Credit Not Presented', which seems reasonable in the circumstances. I've therefore considered the evidence available with mind to this chargeback rule. The rule states the merchant should appropriately inform the consumer of their return policy and the consumer must also abide by this policy.

A's terms and conditions for a return state:

"Ensure you enclose the correct and complete item when making a return. The correct item must be returned to receive a refund".

AESEL received a response from A to support its view that it had received back a different item to what had been sent. A provided AESEL with evidence to show the item that was received back, alongside the box with the tracking number on it, which matched the tracking number Mr T had provided AESEL.

Based on the evidence provided by A, AESEL got in touch with Mr T and asked for evidence that the item he received was the item that was returned. But AESEL didn't receive such evidence and so it took the decision not to continue with Mr T's dispute, and it charged the cost of the transaction back to his credit card.

Where the merchant defends a claim, it is up to AESEL to decide whether or not to take the dispute further and ultimately on to arbitration to be decided by Amex – and it would usually only do this if it thought it had a reasonable prospect of success. I can't know for certain

what view Amex would have held had the chargeback been taken to arbitration, however, I think on balance, A's arguments and evidence would have been favoured over Mr T's.

I say this because based on the evidence available and taking into account A's terms and conditions for a refund, there is no evidence that A had received Mr T's parcel back. As AESEL's review of the chargeback claim required a strict application of Amex's rules here under this chargeback code, I do agree that there wasn't a reasonable prospect of success had it progressed further. Therefore, I don't think they did anything wrong here in declining the claim.

In any event, I think this claim is better suited under Section 75 as it does require additional considerations of terms implied into A's contract to determine if there has been a breach of contract. I've therefore considered this below.

Section 75

Section 75 allows Mr T to make a claim against AESEL in respect of the item he bought using its credit. However, for Section 75 to apply, certain criteria need to be satisfied relating to things like the parties to the transaction, the way the payment was made and the cost of the goods. I am satisfied this is met and Section 75 applies here.

In relation to Mr T's Section 75 claim, AESEL said:

"By your own admission '[courier name removed] has lost the parcel, and the tracking history clearly reflects this' and A is not responsible for the service you have received from the courier. We refer to A's terms which need to be accepted to complete an online transaction: 'RETURNS, REFUNDS AND TITLE

A does not take title to returned items until the item arrives at our fulfilment center.[sic]'. There is no evidence that A has received your return and is withholding any refund."

Based on the evidence that was available to AESEL at the time it made its decision, I don't think it's decision to say Mr T didn't have a valid claim was a fair or reasonable one, and I'll explain why below.

For a Section 75 claim to be successful, there would need to be evidence of a possible breach of contract, or a misrepresentation. A breach of contract can be a breach of an "express" term of a contract – meaning something which is written into it. Or it can be a breach of what is usually referred to as an "implied" term, which is a term treated as being included in the contract due to, for example, legislation which says that it must be. I have gone on to consider whether there were any express or implied terms in Mr T's contract with the A, and which meant it was in breach of contract by not allowing him a refund for the items he says he returned.

I think the express terms in the contract are clear here – A won't refund until the items arrive at its fulfilment centre. And in this case, all the evidence seems to point to the fact that A hadn't received back the goods Mr T says he sent. So, I can't fairly conclude that A has breached the expressed terms in the contract here.

That said, I'm currently of the view that AESEL didn't do enough to fairly consider Mr T's claim in relation to the implied terms in the contract. In this case Mr T followed A's return process and used their return label when handing the goods to a courier service. The evidence shows the tracking code was scanned which means the parcel was accepted for delivery back to A. However, AESEL previously agreed with A's position that the goods subsequently disappearing or the wrong goods having been received by A was something that A wouldn't be liable for and so didn't uphold the Section 75 claim.

Section 34 of the Consumer Contracts (Information, Cancellation and Additional Charges Regulations 2013 (CCR) states the following:

34.—(1) The trader must reimburse all payments, other than payments for delivery, received from the consumer, subject to paragraph (10).

and of particular relevance here:

(4) Reimbursement must be without undue delay, and in any event not later than the time specified in paragraph (5) or (6)

(5) If the contract is a sales contract and the trader has not offered to collect the goods, the time is the end of 14 days after—

(a) the day on which the trader receives the goods back, or (b) if earlier, the day on which the consumer supplies evidence of having sent the goods back.

This provision is treated as an implied term with mind to Section 75 and considerations of whether there has been a breach of contract. So once Mr T provided evidence that he had sent the goods back using A's own postage label, I consider he'd discharged his responsibility of returning the goods appropriately as stated in S34 (5)(b) of the CCRs. This meant that A were contractually obliged to refund him once Mr T had provided evidence of the return.

Mr T hasn't been able to provide a receipt to show the parcel was returned – but my understanding of the process relating to this particular courier is that receipts aren't always provided. However, Mr T has provided the courier tracking information, which shows that he dropped the parcel off, and it was then on its way back to A's fulfilment centre; but it was delayed, and no further tracking updates after this. Based on this, I think it more likely Mr T returned the goods to A, but they didn't arrive.

Given that Mr T has sufficient evidence to show he returned the item, A's refusal to provide him with a refund comprised a breach of contract under Section 75 with reference to the CCRs.

I note that it is A's view that Mr T returned something different to what it had sent. I've thought about this point carefully, but I don't think the evidence shows this. The evidence I've seen from A does show a box with a pre-printed postage label on it. The label includes the same tracking number, but a different person's name and address on it and a different parcel weight to the pre-printed information on Mr T's label. Mr T's evidence shows that the postage label had his name and address on it. It's difficult to know what happened here – but, based on what I've seen, it appears the parcel A received back, wasn't Mr T's. And for the reasons I've explained, it is my view that the evidence points to Mr T having returned the item.

I brought this to AESEL's attention after this case was referred to me for decision and it has simply referred back to A's terms and conditions which state that A would need to receive the parcel back before it would process a refund. But, for the reasons I've already explained here; I'm satisfied Mr T discharged his responsibility of returning the goods once he had handed these over to the courier using A's postage label.

Overall, I'm of the view that Mr T's complaint should be upheld. And I intend to order AESEL to put things right for Mr T by taking the following action:

Refund the £2,999 to Mr T's credit card. AESEL should remove all interest, fees and charges added as a result of this sum. If it follows that this results in a positive balance on Mr T's credit card, they should then add 8% per annum simple interest to the amount overpaid from the date the claim was declined until the date of settlement.

If they consider it is required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr T how much it has taken off. They should also give Mr T a tax deduction certificate if he asks for one, so they can reclaim the tax from HM Revenue & Customs if appropriate”.

Mr T agreed with the findings I made in my provisional decision.

AESEL also agreed to pay Mr T £2,999 to draw the matter to a close. It also said there was no associated interest. And that it would pay Mr T by cheque within 28 days of this service's closure email.

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 that neither party has provided me with any additional information to consider, I see no reason to depart from my provisional findings. It follows that it is my decision that Mr T's complaint should be upheld.

I have explained how AESEL should put things right for Mr T below, I have set this out, as while AESEL agreed to pay Mr T the £2,999, it didn't comment on the interest award I also included in my provisional decision.

Putting things right

To put things right for Mr T, I order AESEL to:

- Rework Mr T's credit card account as though the £2,999 had been refunded to him when he made the claim.
- AESEL should remove all interest, fees and charges added as a result of this sum. I note that AESEL said there wasn't any associated interest or charges, however I have left this in for completeness.
- If it follows that the removal of the £2,999 would have resulted in a positive balance on Mr T's credit card, AESEL should then add 8% per annum simple interest to the amount overpaid from the date the claim was declined until the date of settlement.

If AESEL consider it is required by HM Revenue & Customs to deduct income tax from that interest, they should tell Mr T how much it has taken off. They should also give Mr T a tax deduction certificate if he asks for one, so they can reclaim the tax from HM Revenue & Customs if appropriate.

My final decision

For the reasons set out above, I uphold Mr T's complaint. I order AMERICAN EXPRESS SERVICES EUROPE LIMITED to put things right for Mr T by doing what I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 2 April 2026.

Sophie Wilkinson
Ombudsman