

## **The complaint**

Mr D complains that American Express Services Europe Limited (AESEL) didn't uphold his claim under Section 75 of the Consumer Credit act 1974.

## **What happened**

Mr D bought a mobile phone costing £1,099 in November 2020. He paid for it using his AESEL credit card. In February 2023, his son contacted the manufacturer about an issue with the phone's camera. This was confirmed to be a hardware issue. Mr D's son was told he would need to pay for the repair. Mr D didn't think it reasonable that the phone would have experienced issues after only 26 months and raised a claim under Section 75 with AESEL.

AESEL didn't uphold Mr D's claim. It said for the claim to fall within Section 75 the goods purchased had to be for the benefit of the main cardholder and noted that Mr D's son was using the phone. It also said that no evidence of a breach of contract nor inherent fault had been provided.

Mr D disputed that there was an issue with his claim due to his son using the phone. He said he had used the phone for the first 18 months and then lent it to his son. AESEL provided a further response to Mr D in May 2023. It noted Mr D's comments and credited his account with £50 as a gesture of goodwill for the information provided in regard to not having an eligible claim due to his son using the phone. However, it reiterated that it didn't uphold Mr D's claim. It said evidence hadn't been provided to show the fault was present at supply or that the issue with the camera was due to an inherent fault and so it said there wasn't evidence of a breach of contract. It noted Mr D's comment about when the issue arose and that he thought this meant the phone wasn't of satisfactory quality. It noted the fault arose after 26 months and the phone was outside of the manufacturer's warranty period. It said other factors could have caused the issue, such as use over time and didn't accept that this issue with the camera meant the phone wasn't of satisfactory quality at supply.

Mr D didn't accept AESEL's response and referred his complaint to this service. He reiterated that his phone should have lasted more than 26 months. He said that he had confirmed the phone was faulty and provided a report from the manufacturer confirming there was a fault with the camera hardware.

Our investigator didn't uphold this complaint. While he acknowledged that evidence of a fault with the phone had been provided, he said that evidence of why the camera failed hadn't been provided noting that this could be due to the camera being at the end of its natural usage or there being an earlier demise due to accidental misuse. In conclusion, based on the evidence provided, he didn't think that AESEL had acted unfairly by not upholding Mr D's Section 75 claim.

Mr D didn't accept our investigator's view. He said the fault with the phone had been confirmed and that the phone should have lasted more than 26 months.

## **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.

Mr D raised a claim under Section 75 of the Consumer Credit Act 1974. This section sets out 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. In this case Mr D acquired a mobile phone using his credit card provided by AESEL and based on the other information provided I find it reasonable that his claim under Section 75 was considered.

This complaint has been raised against AESEL and so I have considered whether AESEL has acted in line with its obligations in response to this complaint, including in regard to the obligations arising from Section 75.

For a claim to be upheld under Section 75, there needs to have been a breach of contract or misrepresentation. I have nothing to suggest that the phone was misrepresented to Mr D at acquisition and so I have focused on whether Mr D provided enough evidence such that AESEL should have accepted there had been a breach of contract.

Mr D has provided evidence to confirm there is a fault with the camera on the phone. He has provided a copy of a service invoice from the manufacturer dated 9 May 2023 which states the '*customer reports no preview on rear wide angle lens*'. The report confirms the phone '*fails presence test for wide angle sensor*'. This issue appears to have first been identified in February 2023 when Mr D's son made contact with the manufacturer.

Based on the evidence provided it has been accepted that there is a fault present with the phone. What hasn't been established is whether the fault was present or developing at the point of supply. I note Mr D's comments about the evidence provided but I do not find I can say based on this that AESEL was wrong to say that evidence of an inherent fault hadn't been provided.

I have considered the requirements of the Consumer Rights Act 2015, which state that goods are required to be of satisfactory quality. The quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory and considers factors including the durability of the goods. Mr D's argument is that given the item he bought (a high value mobile phone) the goods should have lasted more than 26 months. I can understand the point he has made. I have nothing to suggest there are other issues with the phone and so I am just considering whether the issue that has arisen with the rear wide angle lens means the phone isn't sufficiently durable.

In this case, I have nothing to confirm why the issue with the lens has arisen. Therefore, I cannot confirm whether it is due to wear and tear or misuse / damage and without this I do not find I have enough to say that this issue means the phone provided isn't sufficiently durable. Therefore, while I understand the upset this issue has caused Mr D, in this case, based on the evidence provided I do not find I can say that AESEL was wrong to say there was insufficient evidence of a breach of contract.

In conclusion, I am sympathetic something has gone wrong with the phone. It was expensive, and it must be disappointing. But given Mr D has owned the goods for over two years he is required to show AESEL that there's an inherent problem with the phone. And based on the evidence Mr D provided, I do not find I can say AESEL acted unfairly by declining his claim.

**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 Mr D to accept or reject my decision before 5 February 2024.

Jane Archer  
**Ombudsman**