

The complaint

Mr A complains American Express Services Europe Limited (AESEL), trading as American Express, were unreasonable in their handling of a claim he made to them under the chargeback scheme.

What happened

The details of this complaint are well known to both parties, so I won't repeat them again here. Instead, I'll focus on giving my reasons for my 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.

I can understand Mr A's distress here as the bathroom equipment he bought, and says he hasn't received, is worth quite a lot of money. I'm required, however, to decide whether AESEL have been reasonable in the way they've handled his chargeback claim and I'm afraid I think they have. I know that will be really disappointing for Mr A, so I'll explain why I've come to that decision.

Where the information I've got is incomplete, unclear, or contradictory, as some of it is here I have to base my decision on the balance of probabilities.

I've read and considered the whole file, but I'll concentrate my comments on what I think is relevant. If I don't comment on any specific point it's not because I've failed to take it on board and think about it but because I don't think I need to comment on it in order to reach what I think is the right outcome.

When something goes wrong and the payment was made with a charge card, as is the case here, it might be possible for the business to raise a chargeback claim.

AESEL didn't have to submit a chargeback claim but I'd think it good practice for them to do so where the right exists and there is a prospect of success.

Ultimately, it would be the chargeback scheme administrators who decided which side to support in a chargeback claim. We don't have authority to challenge how they run their scheme, but I can consider whether AESEL were reasonable in not taking the chargeback to the next stage of arbitration when the merchant defended it.

AESEL raised a chargeback, but the merchant defended it and provided a delivery note they say was signed by Mr A's wife, and a photograph of the pallet delivery at the delivery address that they had recorded: the same address we have for Mr A.

Mr A told them it wasn't his wife's signature, and he hadn't received the goods. He suggested the signature had been faked and he has told this Service that he doesn't think the delivery picture looks like it was taken outside his property.

Mr A may well have a claim he can make to the police if he feels the goods were stolen or the signature was faked. But, with the information AESEL had been provided I don't think they were unreasonable not to take the chargeback claim to arbitration (the next stage) as I don't think they had sufficient evidence to counter the merchant's defence.

I don't therefore think AESEL have done anything wrong here.

There has been some discussion here about whether a claim could have been successful if AESEL had been asked to consider it under section 75 of the Consumer Credit Act 1974 ("section 75"). But that only applies to certain types of credit, such as the credit supplied through a credit card. A charge card isn't regulated under the Consumer Credit Act 1974 and AESEL couldn't therefore consider a section 75 claim. And, even if I'm wrong about that, I think it's likely the result would have been the same, as I don't think AESEL would have had sufficient information to suggest a breach of contract had occurred.

It seems that Mr A's best approach now is to raise this matter with the police or through the courts.

My final decision

For the reasons I've given 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 20 September 2023.

Phillip McMahon
Ombudsman