

The complaint

Mr A complains that American Express Services Europe Limited ("AESEL") has treated him unfairly in relation to a purchase he made using credit it provided.

What happened

I set out below Mr A's version of events, and AESEL's version of those same events.

Mr A's version of events

Mr A had a credit card with AESEL. Mr A used this credit card to make an online purchase from a third party retailer I will refer to as "H". Mr A bought a light fitting from H. When the light fitting arrived Mr A was in the midst of renovating his home, and at that stage he was not ready to put up the light fitting. Consequently he did not unwrap and try to install the light fitting until 19 days after it arrived.

Mr A had hired a qualified electrician to put up the light fitting. However, once the electrician had part installed it both Mr A and the electrician became concerned for the following reasons: The light was:

- Not of satisfactory quality - the light fitting was too structurally unsound to be safely mounted on the ceiling. In particular, the light fitting leaned heavily to one side and rocked within its fitting.
- Not fit for use - Mr A's electrician could not mount the provided lamps to the light fitting due to how unsound the fitting was from a structural perspective. They worried that if the electrician were to mount the lamps it was likely that the light fitting would break and cause damage to the room in which it had been placed.

Mr A complained to H and sent it photos of the light fitting in place. In response H suggested that Mr A might want to use a support wire and offered to send him replacement parts and it also offered him a price discount. But Mr A was not satisfied with this suggested solution. Rather, Mr A thought H's response showed that there was one more reason to reject the light fitting in that, the light fitting was:

- Not in line with the description on H's website - the light fitting is shown on H's website as self-supporting. H had suggested that Mr A might want to add a support wire as other customers had done. According to Mr A by offering this option H was conceding that the light fitting is not fit for purpose. Further, Mr A pointed out that a support wire is not advertised on H's website or included in the parts list, therefore the light fitting had also been misrepresented by photo and by word.

For all of these reasons Mr A concluded that the light fitting was not of satisfactory quality, and this was a breach of contract. He also concluded that the light fitting had been misrepresented. Therefore Mr A wanted to reject the goods and get his money back.

Mr A complained to H. There was then some to and fro between Mr A and H. H missed the point it treated Mr A as if he was trying to return the light fitting within its 14 day returns policy for goods bought remotely. Whereas Mr A was rejecting the goods based on the much broader rights he has as a consumer to reject goods that are not of satisfactory quality.

Ultimately Mr A got nowhere with H, so he turned to AESEL instead. In asking AESEL to take responsibility Mr A relied on the rights he believes he has under Section 75 of the

Consumer Credit Act 1974 ("Section 75"). Specifically Mr A believes he has these rights because he'd used his AESEL credit card to buy the light fitting from H.

AESEL's version of events

AESEL's position is that it had two routes open to it to try to get Mr A his money back. It could have tried to use a process known as chargeback or it could have looked at a complaint against itself under Section 75.

ASEL did start the chargeback process but then stopped. Chargeback is a way in which payment settlement disputes are resolved between card issuers and merchants (i.e suppliers). They are dealt with under the relevant card scheme rules. In certain circumstances the process provides a way for for AESEL to ask for a payment Mr A made to be refunded. But in this instance it decided the terms and conditions of H's returns policy which Mr A had agreed to would have prevented a sucessful chargeback. On this basis it concluded it acted correctly in not continuing with the chargeback.

AESEL also looked at Mr A's claim under Section 75. The general effect of Section 75 is that if Mr A has a claim for misrepresentation or breach of contract against the supplier (here that is H), he can also bring a like claim against AESEL provided certain conditions are met. But AESEL concluded those conditions were not met. As a result if also concluded that it acted correctly in not meeting Mr A's claim under Section 75.

Mr A's response to AESEL's stance

Mr A was dissatisfied with AESELs stance and behaviour on several counts. In his opinion AESEL had made a mistake in not pressing on with the chargeback. It has also made a mistake in not citing his rights under consumer law to support the chargeback. He did not agree he'd accepted H's terms and conditions in any event. So did not agree he could be bound by them.

Moreover, Mr A reiterated his reasons for saying the goods were not of satisfactory quality and he rejected AESEL's position that his claim did not meet the conditions of Section 75. In addition, Mr A was dissatisfied because AESEL had only gone down the Section 75 route after Mr A insisted that it must. Initially it suggested he had no rights under Section 75, therefore he thinks it misled him deliberately and by omission.

Dissatisfied, Mr A complained to our service.

What happened once Mr A's complaint was with us

Once Mr A's complaint was with us AESEL provided us with further information it told us H had told it that the problem was simply that Mr A had put the light fitting together incorrectly and installed it incorrectly too. And when it looked at the facts of the complaint AESEL thought H was right. Moreover, it also pointed out that H had told it that it suspected Mr A might have damaged the light fitting after delivery.

One of our investigators looked into what had happened. Our investigator recommended that Mr A's complaint be upheld.

Mr A accepted our investigator's recommendation, ASEL did not. It repeated its earlier stance and added:

"there is evidence on the product website that the product can be assembled and fitted without the need for additional parts. [Mr A] has supplied photographic evidence of the assembly of their product, and the Merchant has stated that the assembly is not balanced appropriately, which is what is causing the problem.

The wire has been presented as a means of resolving the matter should [Mr A] wish to keep this assembly. This does not mean a wire is required for the product to function, as [Mr A] could simply change the assembly of the product to fit it without this."

AESEL also told us it did not believe that Mr A had damaged the light fitting as H had suggested. So it was not saying that it thought this line of argument would have been a valid defence to the chargeback.

AESEL asked that an ombudsman take a look at Mr A's complaint. Mr A's complaint was passed to me.

Having considered the available evidence, I was not minded to uphold Mr A's complaint, but I thought it was fair to let the parties see my provisional findings and make further submissions (if they wanted to) before I made my final decision. Therefore, I issued a provisional decision and I've set out below what I decided provisionally - and why. This forms part of my final decision.

"What I've provisionally 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.

First, I'm very aware that I've summarised this complaint in far less detail than the parties and I've done so using my own words. I'm not going to respond to every single point made by all the parties involved. No discourtesy is intended by this. Instead, I've focussed on what I think are the key issues here.

Our rules allow me to do this. This simply reflects the informal nature of our service as a free alternative to the courts. If there's something I've not mentioned, it isn't because I've ignored it. Rather, I'm satisfied I don't need to comment on every individual argument to be able to reach what I think is the right outcome.

Where the evidence is incomplete, inconclusive, or contradictory (as some of it is here), I reach my decision on the balance of probabilities – in other words, what I consider is most likely to have happened in the light of the available evidence and the wider circumstances.

I think both chargeback and Section 75 are relevant here. I'll look at each in turn
chargeback

As Mr A paid for the goods using his credit card and wanted a refund, I've thought about whether AESEL dealt with his request fairly. The chargeback system does not give consumers legal rights. But we consider it good practice for a bank to raise a chargeback where there is a reasonable prospect under the card scheme rules of it succeeding. It follows that if I am to order AESEL to refund all or part of the cost of the light fitting, in relation to this complaint point, I must be satisfied that AESEL acted incorrectly in the way it made a chargeback claim under the chargeback regulations.

However, chargebacks are decided under the card scheme rules. It is not a forum for deciding the card holder's legal rights or enforcing them. Mr A may well have rights under consumer legislation against H but that is not relevant to chargeback. So as frustrating and counterintuitive as it may sound to Mr A, even if he has a legal case against H (and I'm not saying here whether he does or not) that does not necessarily mean he would have a winnable case against H under the chargeback rules.

That said, Mr A seems frustrated with how AESEL went about the chargeback. In particular he seems upset because it focused on H's returns policy. Mr A says he did not accept this policy, but I don't see it like that. I say this because by contracting with H online on its website I think he probably did accept H's returns policy. But I think that's not the point, Mr A was not relying on the rules of H's returns policy, rather he was saying the goods were defective/the goods were not as described and he was entitled to reject them for this reason. As far as I am aware (AESEL can correct me if I am wrong when it responds to this provisional decision) this is a valid chargeback reason. However, we don't know if AESEL even relied on this chargeback reason as we asked it about this, and it did not tell us.

But I think this does not get Mr A any further because I think H would have defended the chargeback and one of its defences would have been there was nothing wrong with the light fitting rather the problem was it was assembled and fitted incorrectly. Its website shows several examples of the light fitting being self-supporting. And whilst H put forward the supporting wire idea, I think it is clear this was just to try and help Mr A not because it was making admission that the light fitting was defective or not as described. On the contrary, the communications between the parties (that is between H and Mr A) show, on balance that H was saying Mr A was at fault. Moreover H is the expert, if it saying the problem was due to the defective assembly and installation that would have carried weight, which I think only an expert's report challenging this might have overturned. (It is likely that Mr A's electrician would not have counted as an expert here as he would not have been seen as impartial). In the circumstances, I think this defence would have been successful. In other words, that means on balance, I find that the chargeback would have failed.

Therefore I've no proper basis for saying AESEL needs to take any further action in relation to this part of the complaint.

Section 75

One of the conditions that needs to be in place for a claim to succeed under Section 75, is that there must be a very particular type of agreement in place known as a debtor-creditor-supplier agreement. AESEL says no such agreement exists here because of the role a third party played as a payment facilitator in the transaction involving Mr A, AESEL and H. In particular AESEL has taken this stance because the credit card payment didn't go directly to H, and instead went via a payment facilitator.

I do not think that AESEL is correct to say that the involvement of the payment facilitator means the debtor-creditor-supplier agreement isn't in place. However, this doesn't make a difference because I think Mr A's claim against AESEL would be unsuccessful for other reasons which I'll explain.

I've already mentioned that Section 75 gives Mr A as the credit card account holder a like claim against AESEL as against H for misrepresentation or breach of contract. The difficulty for Mr A is he has not shown that there has been a misrepresentation or a breach of contract.

In this context a misrepresentation means a false statement of fact that Mr A relied on to his detriment and which made him contract. The photos on H's website were certainly a representation that the light fitting is self-supporting. But on balance Mr A's evidence does not demonstrate that the light fitting is not self-supporting. All his evidence shows is that when his electrician assembled and fit the light fitting it leaned to one side. But I cannot disregard the possibility that this was a result of not fitting or assembling the light properly. I'm satisfied that the light fitting is on balance capable of being self-supporting.

Further, Mr A has not demonstrated that there has been a breach of contract. He correctly points out that in a contract between a consumer and a trader, as here, the law implies a term into the contract that the goods will be of satisfactory quality. The relevant law says that the quality of the goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, price and all other relevant circumstances.

The law also says if the goods are not fit for the use for which they are sold or are not as described by the trader then this will mean the goods are not of satisfactory quality.

However, Mr A has not shown any of this, instead all he has shown is that the goods did not perform as they should have done when his electrician carried out the assembly and fitting but he has not shown why. This is not the same as showing the goods did not reach the quality standard they should have done.

For all of these reasons, I've no proper basis for saying AESEL must refund Mr A for the light fitting.

Mr A also complains that he had to tell AESEL that he had rights under Section 75 and that AESEL initially denied this in a phone call with him. This is not the main thrust of Mr A's complaint, but it seems he still wants to pursue this.

I'd expect AESEL to give Mr A correct information about his rights against it. Mr A has given us a detailed and consistent account of his conversation with an employee of AESEL. This is when he says he was told he could not bring a claim under Section 75 against AESEL. AESEL has provided no information to contradict Mr A's version of events, although it has had a fair opportunity to do so. I'm satisfied therefore that AESEL's employee did give Mr A incorrect information in the phone call he tells us about.

That said, AESEL did investigate Mr A's complaint taking into account Section 75 and that is what Mr A wanted it to do. I've seen nothing that suggests that the information that the employee gave Mr A was deliberately intended to mislead. Neither have I seen any pattern of AESEL seeking to mislead either through commissions or omissions. Rather this appears to be a one-off mistake in one call. Such mistakes do regrettably happen and should be corrected, as happened here. Therefore, in the overall context of this complaint I don't find I've any proper basis to ask AESEL to take any further action.

My provisional decision

My provisional decision is that I don't currently intend to uphold Mr A's complaint."

As far as I am aware neither Mr A nor AESEL responded to my provisional 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.

It seems neither Mr A nor AESEL chose to respond to my provisional decision. Since I've had no responses it follows I've reached the same conclusions for the same reasons as I did in my provisional decision.

My final decision

My final decision is that I do not uphold Mr A's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 21 August 2023.

Joyce Gordon
Ombudsman