

The complaint

Mr A has complained about the way American Express Services Europe Limited (AESEL) dealt with his claim for money back in relation to a purchase he'd made using his credit card.

What happened

On 21 May 2022 Mr A bought four graphics cards from an online retailer using his AESEL credit card. Two of the cards cost £600 and two cost £1,800 – so he paid £4,800. The goods were posted to him. It looks like three packages were picked up from a Royal Mail delivery office on 24 May 2022. Mr A said none of the graphics cards were inside the packages. I've seen he contacted the supplier on 25 May 2022 to let it know. The supplier wrote back the next day to ask for the tracking number and details of whether the packaging looked like it had been tampered with. Mr A responded to say it didn't look like the boxes had been tampered with. The supplier wanted to check what item was missing, and Mr A said he didn't receive anything. The supplier asked for pictures of the packaging. Mr A sent a picture of one of the packages. The supplier asked for pictures of the other packages. It looked like it didn't receive a response so on 10 June 2022 it said it wasn't able to proceed.

Mr A says he contacted AESEL at the beginning of June 2022 as well to ask for help, and AESEL asked for evidence from him – although the notes indicate this was done for goods being not as described or defective rather than for not having been received.

I can't see AESEL received further information from Mr A. But the dispute was reopened in October 2022 and AESEL asked Mr A to speak with Royal Mail. It said it could submit a dispute with the supplier. The notes indicate Mr A told AESEL he was convinced the package was tampered with by Royal Mail or the supplier.

Mr A said he contacted Royal Mail around December 2022 and it told him the packages had been damaged leading to missing items. He says he sent this information to the supplier, but it didn't offer to help. He contacted AESEL to put in a claim under section 75 of the Consumer Credit Act 1974 in February 2023. He requested a full refund.

AESEL sent a response to the claim on 24 March 2023. It said the evidence showed three packages had been dispatched and collected. It said the packages weighed 2kg, 5kg, and 10kg respectively and so the contents were present. It said it was satisfied the supplier had shown the items were delivered.

Mr A wanted to complain about the outcome of the claim, and so he referred matters to the Financial Ombudsman. In summary, he said AESEL hadn't adequately investigated the claim. He said the supplier was unhelpful and subsequently went out of business. He referred to an email he'd received from the Royal Mail saying the packages' weight didn't match the declared weight on the label. He also highlighted on one of the boxes it said '4 items'. He requested a full refund.

AESEL sent a final response to the complaint on 24 May 2023. It said Mr A hadn't evidenced the supplier misrepresented the sale or breached the contract. It declined the complaint.

Mr A asked the Financial Ombudsman to investigate. Our investigator ultimately didn't uphold the complaint. She said Mr A would have noticed straight away when collecting the packages if they were empty. She said she didn't know why one of the boxes said '4 items' on it. She noted the Royal Mail delivery sticker didn't appear to have been tampered with. And she also referred to the email Mr A received from Royal Mail and said she thinks this was to provide information to Mr A rather than to confirm what actually happened.

Mr A didn't accept the outcome. In summary, he said the weights don't tally up to the actual weights of the items. He said he didn't initially suspect tampering because the packaging appeared intact. But he said Royal Mail told him this wasn't the case. He referred to an email saying *The items have been damaged in transit as they passed through our sorting machinery and contents have become separated from the packaging*. He said this proves the sorting machine caused the items to become separated from their packaging. Mr A says AESEL didn't take this on board or investigate matters properly. He said he didn't notice the items weren't present when he picked them up because he trusted things would be in order. He also said that tampering can be done skilfully and that it won't always show obvious signs.

As things weren't resolved, the complaint was passed to me to make a decision.

I asked our investigator to ask for some further information from the parties. I wanted to find out more about how the supplier calculated the weights of the items. I also wanted to see if Mr A had any evidence of when he first raised the dispute; why there appeared to be some delays; whether there was any further supporting information he could supply from the Royal Mail; and details of whether a separate claim was raised through the Royal Mail.

The supplier said the weights were calculated using the overall weight of the entire package. Mr A, however, said the goods in total should have weighed about 8kg, and not 17kg. Mr A also responded to the questions our investigator asked him. He reiterated the weights were wrong. He said there were no delays from his side. He said he'd not received a response from the Royal Mail and that AESEL should have dealt with the claim for him.

I issued a provisional decision that said:

I want to acknowledge I've summarised the events of the complaint. I don't intend any discourtesy by this – it just reflects the informal nature of our service. I'm required to decide matters quickly and with minimum formality. But I want to assure Mr A and AESEL that I've reviewed everything on file. And if I don't comment on something, it's not because I haven't considered it. It's because I've concentrated on what I think are the key issues. Our powers allow me to do this.

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.

What I need to consider is whether AESEL – as a provider of financial services – has acted fairly and reasonably in the way it handled Mr A's request for getting his money back. It's important to note AESEL isn't the supplier. I've gone on to think about the specific card protections that are available. In situations like this, AESEL can consider assessing a claim under section 75 or raising a chargeback.

Section 75 is a statutory protection that enables Mr A to make a like claim against AESEL for breach of contract or misrepresentation by a supplier paid by credit card in respect of an agreement it had with him for the provision of goods or services. But there are certain conditions that need to be met for section 75 to apply.

The chargeback process provides a way for a card issuer to ask for a payment to be refunded in certain circumstances. The chargeback process is subject to rules made by the relevant card scheme. It's not a guaranteed way of getting money back.

While it's good practice for a card issuer to attempt to chargeback where certain conditions are met and there's some prospect of success, there are grounds or dispute conditions set by the relevant card scheme that need to be considered. If these are not met, a chargeback is unlikely to succeed. And something going wrong with a merchant won't always lead to a successful claim.

Mr A raised a claim through AESEL a couple of weeks after the issue with the delivery. Mr A says the investigation was closed prematurely with the reason cited as 'incomplete set up'. From what I've seen AESEL wrote to Mr A asking for information. I asked AESEL about the 'incomplete set up'. AESEL said in February 2023 Mr A went through his online account to reopen the dispute but didn't follow the steps, so an automated email was sent to him advising him of this. This was the email it sent him on 7 February 2023.

It's not totally clear from the evidence why there was a gap between the dispute being raised in June 2022 and the conversations in October 2022 about reopening the dispute and contacting the Royal Mail. I can't see whether AESEL was waiting for information from Mr A, or whether Mr A was waiting for information from AESEL. AESEL did say in its 10 June 2022 correspondence to Mr A it needed supporting evidence by 21 June 2022 or it would close the dispute. It didn't receive information which is perhaps why the dispute was closed. In any event AESEL didn't have enough information at the time to raise a chargeback. But it's likely that even if it did, the chargeback would have been defended by the supplier because it had the proof of postage (and collection), which is likely what would have been required for a chargeback defence.

I've not seen enough to determine the cause of delays between June and October 2022. I've therefore looked at what happened next and considered the way AESEL ultimately handled the claim brought under section 75.

I can see AESEL asked Mr A to speak to the Royal Mail in October 2022. And it looks like Mr A has a response from the Royal Mail from the beginning of December. There was another delay and Mr A contacted AESEL in February 2023 to put in his claim. Mr A hasn't fully explained the delays here. He says he contacted the supplier, but I've not got evidence that's what happened (until February 2023). I also don't know why it seems he didn't follow up with the supplier before this when it asked for pictures of the other packages. I find this unusual given how much the items cost. And I think the delays also meant it'd be more difficult for the parties to investigate what happened. I'm also not sure why Mr A said in his complaint form that the supplier had gone out of business.

Overall, while I know Mr A will be disappointed, I don't think AESEL acted unfairly by declining the claim in March 2023. To be clear, I'll never know exactly what happened with regards to the goods. Something may have gone wrong. As I said, I'm not considering a complaint against the Royal Mail or the supplier. I'm considering a complaint about how AESEL handled the claim. I'm required to decide complaints quickly and with minimum formality. And unlike the courts, I'm not able to call witnesses and take sworn evidence for example.

In this case, there are a few unexplained delays; I've not been supplied sufficient supporting information which would've been helpful; and there's some curious information that's been supplied.

Mr A is alleging the supplier has done something wrong with the weights of the items. And that the weights of the items don't match up. Mr A has also supplied a response from the Royal Mail saying The items have been damaged in transit as they passed through our sorting machinery and contents have become separated from the packaging. And that this proves the sorting machinery caused the items to detach from their packaging. But we've asked Mr A to follow up on this with the Royal Mail and ask for confirmation the response specifically referred to the packages that were sent to him, or whether this could be some sort of templated response. He's not supplied anything further from the Royal Mail.

Is the most likely thing to have happened that every box was weighed incorrectly, every box was damaged, and all the contents have become separated? Mr A is alleging there's problems at every stage here for every parcel from the Royal Mail and the supplier. And he's said he didn't notice he picked up three empty boxes because they weren't clearly tampered with and he thought everything was in order. All of this is possible, but I don't think, on balance, it was unfair for AESEL to conclude this wasn't the most likely thing to have happened. It's unlikely there was a problem with the weight of every item, all the items became separated from every box (indicating there were items in there to start with), and that the Royal Mail then put the boxes back together (empty) and made it look like they'd not clearly been tampered with at the point of collection.

As I said, I'll never know what happened. I appreciate it's hard to prove you've not received something. But based on what I've seen, on balance, I don't think AESEL acted unfairly by declining the claim because I don't think there's sufficient evidence of a breach of contract.

AESEL said it has nothing further to add. Mr A responded to say, in summary:

- He submitted photos of all the packages to the supplier. He's not sure why it couldn't process all the images.
- When he raised the claim, AESEL raised the reason for dispute incorrectly.
- The gap between June and October 2022 occurred because he thought AESEL was investigating things. He said he submitted all requested evidence on time.
- He did follow up with the supplier and when the issue remained unresolved, he contacted AESEL.
- He didn't say the supplier had gone out of business as evidenced by his claim form.
- He obtained a further response from Royal Mail that said it could confirm sorting machinery caused damage to all parcels. And that the previous response wasn't a template. The response also said usually when parcels are damaged it tries to match up the contents to the packages but in Mr A's case it was unable to do that.

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'd like to thank the parties for their responses. AESEL hasn't submitted anything further, so I've thought about Mr A's points. He's given some explanations for why there were some delays early on in particular up to October 2022, which seem plausible. It's not totally clear why there were further delays until February 2023, but I find I have enough to make a decision on the complaint. The delays don't make or break the case, I asked for specific details to make sure I had a good understanding of the timeline.

With regards to saying the supplier had gone out of business, I just wanted to find out why Mr A said this – but I agree it wasn't during the claim, it was on our complaint form.

I want to thank Mr A for supplying further evidence from the Royal Mail. It's curious that when we asked the Royal Mail for further evidence it said it couldn't access the reference numbers and there was no data available. It said it thought this could be due to the time that'd passed. The Royal Mail said all claims and enquiries need to be made within 80 days. Whereas Mr A supplied evidence that sorting machinery damaged all the parcels and that it was unable to match up the contents to the parcels.

Having considered everything, based on what was supplied to AESEL at the time of the claim, I don't find its answer was unfair. As I said in my provisional decision, I don't think it was unreasonable AESEL thought it unlikely all the parcels were weighed incorrectly; all the parcels were damaged by sorting machinery; all the contents were lost; all the parcels were put back together empty by the Royal Mail and made to look like they hadn't been tampered with; and this wasn't noticed straight away when they were collected. While I know Mr A will be disappointed, I don't find I have the grounds to say that AESEL acted unreasonably when it declined the claim, and the subsequent complaint. I'm therefore not making any directions.

My final decision

My final decision is that 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 9 January 2024.

Simon Wingfield
Ombudsman