

The complaint

Mr P complains about American Express Services Europe Limited (AESEL) trading as American Express's response to a claim he made under section 75 of the Consumer Credit Act 1974 ("section 75")

What happened

In May 2020 Mr P bought a laptop from a third party retailer "A". He paid £1,299 for the laptop using his American Express credit card. Unfortunately, after two and a half years Mr P became aware of a problem with his laptop, which wouldn't power on. He took the laptop (which by that stage was out of warranty) to A, who undertook a repair at a cost of £589.

Mr P didn't think it was right that he bear the cost of the repair. He felt it reasonable to expect a new laptop to last for a longer period. He believes the laptop wasn't of satisfactory quality, as it wasn't sufficiently durable as required under the Consumer Rights Act 2015 ("CRA").

A was unwilling to cover the cost, so Mr P made a breach of contract claim to American Express under the connected lender liability provisions of section 75. This has the effect, in certain circumstances, of making the credit provider jointly and severally liable for a breach of contract claim against a retailer.

American Express declined to meet Mr P's claim. It said the evidence he supplied wasn't enough to demonstrate the fault was connected to an inherent defect in the laptop. American Express added that because the problem arose more than six months from Mr P's purchase, the CRA presumption that the fault was present at the point of supply didn't apply. It said that without a suitable report identifying an inherent fault or manufacturing defect, it wouldn't meet his claim. Mr P was unhappy with American Express's stance and complained to us.

Our investigator didn't think American Express was acting unfairly in declining to meet Mr P's claim. She considered it had handled Mr P's claim correctly and that more evidence was required to demonstrate A (and by extension, American Express) was in breach of contract.

Mr P remains unhappy and has asked for this review. He made the following points:

- *"Is it reasonable for so many major components to fail after 2.5 years if the item was durable and of satisfactory quality"*
- *The repairs have now been completed by A - so further evidence around faults cannot be obtained. But A maintained that once the laptop was sent off and opened up, should the damage be due to misuse/caused by owner, they would return it to me.*
- *The fact that they actually then replaced more components than originally suggested without any additional charge suggests they accepted some form of responsibility/liability.*

- *Does the ombudsman, as a reasonable individual, think it's normal and acceptable for the catastrophic failure that occurred here to be seen as in line with what a consumer should expect around such an item."*

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.

Both parties accept the transaction falls within the ambit of section 75 and appear to be well-versed in the relevant provisions. So I don't think it's necessary for me to set them out again here. Rather, I'll focus on the way American Express dealt with Mr P's breach of contract claim, which is founded in the terms implied into his contract with A under the CRA.

Having the right to bring a claim is not the same as saying that claim will be successful. The respondent is usually entitled to defend a claim brought against it. The question for me to address is whether, in light of the available evidence, American Express is treating Mr P unfairly in the way it has responded to his claim.

As I've said, the CRA implies certain terms into consumer contracts for goods, digital content and services. One of those implied terms is that goods will be of satisfactory quality. If they are not, they are deemed not to conform to the contract. The presumption under the CRA is that where a lack of conformity to contract exists at any time within six months of delivery to the consumer, the goods are deemed not to have conformed at the point of supply.

Whether goods are of satisfactory quality is determined by reference to whether they meet the standard a reasonable person would consider satisfactory, taking account of matters such as price and description, and includes (among other things) freedom from minor defects, and durability.

It's not in dispute that there was a fault with the laptop that necessitated repair. But given that the problem didn't arise for over two years, American Express is entitled to say that the presumption of non-conformity at the point of supply doesn't apply to Mr P's claim. The claim therefore falls to be determined on the evidence that points towards a latent fault or defect being present (though not apparent when Mr P acquired the laptop).

In this respect, I fully understand Mr P's point about a reasonable expectation that a laptop would last rather longer than this one. While there's no definitive lifetime for such goods, I see no reason to think he could not reasonably have expected more than two to three years of unimpaired use.

However, I don't think such a finding is on its own particularly helpful. The durability of computer equipment can be affected by various factors, including heat, electrical and physical damage. The fact the laptop has developed a fault doesn't necessarily mean that it wasn't of satisfactory quality when Mr P bought it.

Further, because of the way computer circuitry operates, problems with certain hardware might have a knock-on effect on other components. I don't consider the fact that A replaced additional components indicates an acceptance of fault or liability. It could just as easily point to a cost-effective means of restoring the laptop to operation.

I've examined A's work authorisation compiled when it took Mr P's laptop in for repair. It shows a flat rate repair cost estimate, and reads as follows:

"Issue: Customer reports that the computer will no longer power on.

*Steps to Reproduce: We tried a revive and a restore but they failed with an error.
Cosmetic Condition: Dent front left. Chip along front. Scuffing rear right. Dent rear left.
Proposed Resolution: Chargeable replacement of the logic board required.
No backup. But customer has authorised us to go ahead. They are aware of the data loss.
Please be aware that if any liquid is found inside your computer during the repair then we will stop the repair and contact you to offer a requote of the repair.
Sending to depot for service. Repair turnaround is up to a maximum of 14 days.”*

That isn't quite what Mr P describes in his submissions following the investigator's assessment. But in any event, there doesn't seem to have been any undertaking (or attempt) to establish the cause of the failure in the course of repair. So I don't believe I can properly conclude that the way in which A carried out the repair offers any appropriate evidence on which to reach a finding about whether the fault was present at the point of supply.

It's unfortunate that, having been repaired, the laptop may now offer little in the way of reliable evidence to establish this same point. That doesn't prevent Mr P from making suitable enquiries – either of A or of some other expert in the field – to obtain evidence that might demonstrate the most likely cause of the fault and support his claim. Indeed, I think it's likely he'd need to do so in order to persuade a court to uphold his claim for the cost of restoring the laptop to working order. And of course, it's possible such evidence might point towards the fault being attributable to some other intervening event.

In the absence of persuasive evidence of the root cause of the fault to support that the laptop was not of satisfactory quality when it was supplied to Mr P, I can't uphold his complaint. It follows I'm satisfied American Express has properly considered its potential section 75 liability and was entitled to take the approach it has.

My final decision

My final decision is that I don't uphold Mr P's complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr P to accept or reject my decision before 6 September 2023.

Niall Taylor
Ombudsman