

## **The complaint**

Mr R complains about American Express Services Europe Limited's (AESEL) decision to reject a claim he made to them under section 75 of the Consumer Credit Act 1974 ("section 75").

## **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 know it will disappoint Mr R, but I don't think AESEL have been unreasonable here. I'll explain why.

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 credit card, as is the case here, it might be possible to make a section 75 claim. This section of the Consumer Credit Act (1974) says that in certain circumstances, the borrower under a credit agreement has a like right to claim against the credit provider as against the supplier if there's either a breach of contract or misrepresentation by the supplier.

I'm not determining the outcome of a claim that a party might have under section 75. I take section 75 into account when I think about what's a fair way to resolve the complaint, but I don't have to reach the same view as, for example, a court might reach when considering breach of contract or misrepresentation.

From what I can see, all the necessary criteria for a claim to be made under section 75 have been met.

The Consumer Rights Act (2015) is the relevant legislation. It says that the laptop should have been of satisfactory quality when supplied and that the quality of goods is satisfactory if they meet the standard that a reasonable person would consider satisfactory taking into account any description of the goods, the price and all the other relevant circumstances.

The supplier, and by virtue of section 75 also AESEL, are only responsible for faults that are either present, or developing, when the goods are supplied. They're not responsible for

faults that occur later. And, as Mr R had the goods for over six months when the fault occurred the relevant legislation puts the onus on him to demonstrate the fault was present, or developing, when he bought the laptop.

Mr R has suggested the fault was caused because the battery had bulged and damaged the fan. He's referred us to comments made in an on-line forum about similar issues. But I don't think that demonstrates the failure of Mr R's laptop is because of that issue; I've not been provided, for instance, with any expert view on the cause of Mr R's specific laptop. So, I'm not persuaded that AESEL were wrong to reject Mr R's claim that the laptop had been developing an issue since he bought it.

The relevant legislation explains that when we consider whether goods are of satisfactory quality we should think about whether they have been durable. It was several years before Mr R's laptop failed and I don't think a reasonable person would consider it not to have been durable.

Ultimately, I don't think AESEL's decision not to uphold Mr R's section 75 claim was unfair, and I think the compensation they've provided in respect of the distress and inconvenience caused by delays was reasonable. I'm not asking AESEL to take any further action.

### **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 R to accept or reject my decision before 5 October 2023.

Phillip McMahon  
**Ombudsman**